

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

APRIL TERM, 1938

No. 7211

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND HOMER S. CUM-
MINGS AS TRUSTEES OF THE POSTAL SAVINGS SYSTEM; WILLIAM A.
JULIAN AS TREASURER OF THE UNITED STATES OF AMERICA AND
WILLIAM A. JULIAN AS TREASURER OF THE BOARD OF TRUSTEES OF
THE POSTAL SAVINGS SYSTEM, APPELLANTS

VS.

CHARLES H. ALBERS AS RECEIVER OF WOODLAWN TRUST AND SAVINGS
BANK, A CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

FILED JULY 15, 1938

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DISTRICT OF COLUMBIA

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MINGS, AS TRUSTEES OF THE POSTAL SAVINGS SYSTEM, WILLIAM A.
JULIAN, AS TREASURER OF THE UNITED STATES OF AMERICA AND
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BANK, A CORPORATION, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

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A In the District Court of the United States for the District of
Columbia

No. 59876. In Equity

WILLIAM L. O'CONNELL, AS RECEIVER OF WOODLAWN TRUST AND
SAVINGS BANK, A CORPORATION, PLAINTIFF

vs.

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND HOMER S. CUM-
MINGS, AS TRUSTEES OF THE POSTAL SAVINGS SYSTEM, WILLIAM A.
JULIAN, AS TREASURER OF THE UNITED STATES OF AMERICA AND
WILLIAM A. JULIAN, AS TREASURER OF THE BOARD OF TRUSTEES OF
THE POSTAL SAVINGS SYSTEM, DEFENDANTS

UNITED STATES OF AMERICA.

District of Columbia, ss:

Be it remembered, that in the District Court of the United States
for the District of Columbia, at the City of Washington, in said
District, at the times hereinafter mentioned, the following papers
were filed and proceedings had, in the above-entitled cause, to
wit:

1 *Bill of complaint*

Filed Oct. 28, 1935

In the Supreme Court of the District of Columbia

Holding an Equity Court

No. 59876. In Equity

WILLIAM L. O'CONNELL, AS RECEIVER OF WOODLAWN TRUST AND
SAVINGS BANK, A CORPORATION, 7 SOUTH DEARBORN STREET, CHICAGO,
ILLINOIS, PLAINTIFF

vs.

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND HOMER S. CUM-
MINGS, AS TRUSTEES OF THE POSTAL SAVINGS SYSTEM, WILLIAM A.
JULIAN, AS TREASURER OF THE UNITED STATES OF AMERICA AND
WILLIAM A. JULIAN, AS TREASURER OF THE BOARD OF TRUSTEES OF
THE POSTAL SAVINGS SYSTEM, WASHINGTON, D. C., DEFENDANTS

*To the Honorable Judges of the Supreme Court of the District of
Columbia:*

Plaintiff respectfully shows to the Court as follows:

1. Plaintiff is Receiver of Woodlawn Trust and Savings Bank, a
corporation, by virtue of his appointment as such Receiver by the
Auditor of Public Accounts of the State of Illinois pursuant to the
statutes of the State of Illinois, as hereinafter more fully and par-
ticularly shown, and brings this suit in his capacity as such Receiver.

2. The Postal Savings System and a board of trustees, consisting
of the Postmaster General, the Secretary of the Treasury, and the

Attorney General, severally, acting ex-officio, for the control, supervision, and administration of the postal savings depository offices of said Postal Savings System and of the funds received as deposits at such postal savings depository offices, were created by an Act of Congress entitled "An Act to establish postal savings depositories for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes," approved

2 June 25, 1910. James A. Farley is the Postmaster General, Henry Morgenthau, Jr., is the Secretary of the Treasury, and Homer S. Cummings is the Attorney General, and the said James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, are, ex-officio, the persons constituting the Board of Trustees of the Postal Savings System, and this suit is brought against them in their capacity as Trustees of the Postal Savings System. The defendant William A. Julian is Treasurer of the United States of America and as such is, by virtue of the Act of Congress above referred to, ex-officio Treasurer of the Board of Trustees of the Postal Savings System, and this suit is brought against him in his capacity of Treasurer of the United States and also in his capacity of Treasurer of the Board of Trustees of the Postal Savings System.

3. The plaintiff is a citizen of the United States and a resident of the City of Chicago, in the State of Illinois, and each of said defendants is a citizen of the United States and has his official residence in the City of Washington, in the District of Columbia.

4. The Woodlawn Trust and Savings Bank was duly organized as a corporation on or about April 27, 1905, under and by virtue of an Act of the General Assembly of the State of Illinois entitled "An Act Concerning Corporations with Banking Powers," as approved and subsequently amended as hereinafter more fully shown.

5. By section 5 of Article XI of the Constitution of the State of Illinois, in force August 8, 1870, and ever since up to the present time, it was and is provided as follows:

"No act of the general assembly authorizing or creating corporations or associations with banking powers, whether of issue, deposit, or discount, nor amendments thereto, shall go into effect or in any manner be in force unless the same shall be submitted to a
3 vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law."

6. The General Assembly of the State of Illinois, at the session which commenced January 5, 1887, and adjourned June 15, 1887, passed an Act entitled "An Act concerning corporations with banking powers," which Act was approved by the Governor of the State of Illinois on June 16, 1887, and was submitted to a vote of the people at the general election next succeeding the passage of the same, to wit, at the general election in November 1888, and was approved by a majority of all the votes cast at such election for or against such law.

By section 1 of said Act it was provided as follows:

"That on a ratification of this act by a vote of the people in accordance with the Constitution of this State it shall be lawful to form banks and banking associations for the purpose of discount and deposit, and to buy and sell exchange and do a general banking

business, excepting only issuing bills to circulate as money, and shall have power to loan money on personal and real security and accept and execute trusts."

By section 9 of said Act it was provided as follows:

"Associations organized under this act shall be bodies corporate and politic for the period for which they may be organized, may sue and be sued, may have a common seal which they may alter or renew at pleasure, may own, possess, and may carry as assets the real estate necessary in which to do its banking business, and such other
4 real estate to which it may obtain title in the collection of its debts, but shall not carry in its assets any real estate except its banking house for a period of more than five years after acquiring title to the same."

The General Assembly of the State of Illinois at the session which commenced January 9, 1889, and adjourned sine die May 28, 1889, passed an Act entitled "An Act to amend sections one (1), six (6), and eleven (11), of an Act entitled 'An Act concerning corporations with banking powers,' approved June 16, 1887," which act was approved by the Governor of the State of Illinois on June 3, 1889, and was submitted to a vote of the people at the general election next succeeding the passage of the same, to wit, at the general election in November 1890, and was approved by a majority of all the votes cast at such election for or against such law.

By section 1 of said Act it was provided, among other things, as follows:

"That sections one (1), six (6), and eleven (11) of an Act entitled 'An Act concerning corporations with banking powers,' approved June 16, 1887, be amended so as to read as follows:

"SECTION 1. That on a ratification of this Act by a vote of the people in accordance with the Constitution of this State it shall be lawful to form banks and banking associations, as hereinafter provided, for the purpose of discount and deposit, buying and selling exchange, and doing a general banking business, excepting the issuing of bills to circulate as money, and such banks or banking associations shall have the power to loan money on personal and real estate
5 security, and to accept and execute trusts."

The sections of said Acts hereinabove in this paragraph set forth were the only sections of said Acts conferring powers, with reference to the transaction of business, upon banking corporations organized under said Act entitled "An Act concerning corporations with banking powers," as amended, at the time of the organization of the said Woodlawn Trust and Savings Bank under and by virtue of said Act concerning corporations with banking powers, as amended, as aforesaid, and up to the time of the approval by the voters of an Act to revise the law with relation to banks and banking, hereinafter more particularly referred to.

7. The General Assembly of the State of Illinois, at the session which commenced January 8, 1919, and adjourned sine die June 30, 1919, passed an Act entitled "An Act to revise the law with relation to banks and banking," which Act was approved by the Governor of the State of Illinois on June 23, 1919, and was submitted to a vote of the people at the general election next succeeding the passage of the same, to wit, at the general election in November 1920, and was

approved by a majority of all the votes cast at such election for or against such law.

By section 1 of said Act it was provided as follows:

"That on a ratification of this Act by a vote of the people in accordance with the Constitution of this State, it shall be lawful to form banks and banking associations, as hereinafter provided, for the purpose of discount and deposit, buying and selling exchange and doing a general banking business, excepting the issuing of bills to circulate as money; and such banks or banking associations shall have the power to loan money on personal and real estate security, and to accept and execute trusts."

6 By section 9 of said Act it was provided as follows:

"Associations organized under this act shall be bodies corporate and politic for the period for which they may be organized, may sue and be sued, may have a common seal which they may alter or renew at pleasure, may own, possess and may carry as assets the real estate necessary in which to do its banking business, and such other real estate to which it may obtain title in the collection of its debts, but shall not carry in its assets any real estate except its banking house for the period of more than five years after acquiring title to the same."

By section 12 of said Act it was and is provided that "All corporations with banking powers existing by virtue of any special charter or general law of this State, shall be subject to the provisions and requirements of this Act in every particular, as if organized under this Act."

The General Assembly of the State of Illinois, at the session which commenced January 9, 1929, and adjourned sine die June 20, 1929, passed an Act entitled "An Act to amend sections 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 15½ of 'An Act to revise the law with relation to banks and banking,' approved June 23, 1919, as amended, and to add to said Act a new section to be known as section 11½," which Act was approved by the Governor of the State of Illinois on June 4, 1929, and was submitted to a vote of the people at the general election next succeeding the passage of the same, to wit, at the general election in November 1930, and was approved by a majority of

7 all the votes cast at such election for or against such law.

By section 1 of said Act it was and is provided as follows:

"It shall be lawful to form banks and banking associations, as hereinafter provided, for the purpose of discount and deposit, buying and selling exchange and doing a general banking business, excepting the issuing of bills to circulate as money; and such banks or banking associations shall have the power to loan money on personal and real estate security, and to accept and execute trusts, and shall be subject to all of the provisions of this Act."

By section 9 of said Act it was and is provided as follows:

"Associations organized under this Act shall be bodies corporate and politic for the period for which they may be organized, may sue and be sued, may have a common seal which they may alter or renew at pleasure, may own, possess, and may carry as assets the real estate necessary in which to do its banking business, and such other real estate to which it may obtain title in the collection of its debts, but shall not carry in its assets any real estate except its banking house

for the period of more than five years after acquiring title to the same."

The sections of said Acts hereinabove in this paragraph set forth were the only sections of said Acts conferring powers, with reference to the transaction of business, upon banking corporations organized under said Act entitled "An Act concerning corporations with banking powers," as amended, or under said Act entitled "An Act to
8 revise the law with relation to banks and banking," as amended, from the time of the approval by the voters of the said Act to revise the law with relation to banks and banking until the appointment of a receiver for said Woodlawn Trust and Savings Bank on July 1, 1932, as hereinafter more fully shown.

8. By section 11 of the said Act to revise the law with relation to banks and banking, as amended as aforesaid, it was and is, in part, provided as follows:

"Should the capital stock of any bank organized under this Act become impaired, the Auditor shall give notice to the directors to have the impairment made good by assessment of the stockholders, pro rata, for an amount, if necessary, equal to the par value of the stock held by each, or to reduce the capital stock of such bank, if the reduction should not bring the capital below the provisions of this section, and if any stockholder or stockholders of such bank shall neglect or refuse after thirty days notice to pay the assessment as provided in this section it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction (after twenty days notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located or in a newspaper published nearest thereto) to make good the deficiency, and the balance, if any, shall be returned to such delinquent stockholder or stockholders. If the capital stock of said bank shall remain im-

9 paired for sixty days after such notice by the Auditor, or, if it appears from the reports made to the Auditor under this Act, or from any examination made by or on behalf of the Auditor that the conditions of any bank organized under this Act are such that the impairment of the capital stock cannot be made good or if in the opinion of the Auditor, it is operating with an insufficient portion of its assets in cash or readily convertible securities, or that the business of any such bank is being conducted in an illegal, fraudulent or unsafe manner, he may, in his discretion, without having taken the steps provided in this section to make good the impaired capital stock, forthwith, for the purpose of reorganization or liquidation through receivership, take possession and control of the banking house, furniture and fixtures, books, records and assets of every description, of such bank. If the Auditor determines that the bank cannot be reorganized and that the same should be liquidated through receivership he shall appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the Auditor, shall take possession of, and for the purpose of the receivership, the title to, the books, records and assets of every description of such bank, and shall proceed to collect all debts, dues and claims belonging to it, and, upon the order of a

court of record of the County in which said bank is located, may sell or compound all bad or doubtful debts, and on a like order may sell the real and personal property of such bank, on such terms as the court shall direct.

10 "Such receiver shall have authority to sue and defend in his own name with respect to the affairs, assets, claims, debts and choses in action of such bank."

9. From and after its organization as a corporation and up to and until June 22, 1932, the said Woodlawn Trust and Savings Bank operated a State bank in the City of Chicago, in Cook County, Illinois, under and pursuant to the authority conferred upon it by virtue of its organization as a corporation, as aforesaid, under the said Act of the General Assembly of the State of Illinois entitled "An Act concerning corporations with banking powers," as approved and subsequently amended as hereinabove shown. On or about June 22, 1932, the Auditor of Public Accounts of the State of Illinois found that the capital stock of said Woodlawn Trust and Savings Bank had become impaired and that the condition of said bank was such that said impairment could not be made good, and thereupon took control of the property, assets, and effects of said bank and prohibited the carrying on by it of any banking business, and thereafter, on July 1, 1932, appointed one H. C. Vernon to act as receiver of the assets, property, and effects of said Woodlawn Trust and Savings Bank, which action of the said Auditor of Public Accounts of the State of Illinois in closing the said Woodlawn Trust and Savings Bank and taking possession of its books, records, assets, property, and effects and in appointing said H. C. Vernon receiver thereof, was approved by an order or decree entered by the Circuit Court of Cook County, Illinois, on November 9, 1932, in a certain suit then and still pending in said court entitled, "People of the State of Illinois ex rel. Oscar Nelson, as Auditor of Public Accounts of the State of Illinois vs. Woodlawn Trust and Savings Bank, a corporation." Said H. C. Vernon, by virtue of said appointment, acted as such receiver until January 13, 1934, on which date, by reason of the resignation of said H. C. Vernon as such receiver, the Auditor of Public Accounts of the State of Illinois appointed plaintiff, William L. O'Connell, as the successor receiver of said Woodlawn Trust and Savings Bank and to act in the place and stead of said H. C. Vernon as receiver of said bank. Thereupon on, to wit, January 13, 1934, plaintiff, William L. O'Connell, duly qualified as such receiver, and took possession of, and for the purpose of the receivership the title to, the books, records, and assets of every description of said Woodlawn Trust and Savings Bank, except possession of the assets hereinafter referred to, and has ever since been and now is the Receiver of said Woodlawn Trust and Savings Bank by virtue of such appointment pursuant to the said statutes of the State of Illinois. The resignation of the said H. C. Vernon, as receiver of said Woodlawn Trust and Savings Bank, was approved, recognized, and accepted by an order entered by the Circuit Court of Cook County, Illinois, on February 26, 1934, in the said suit entitled "People of the State of Illinois ex rel. Oscar Nelson, as Auditor of Public Accounts of the State of

Illinois vs. Woodlawn Trust and Savings Bank, a corporation," and by the same order the said appointment, qualification, and functioning of plaintiff, as successor receiver of said bank, was made a matter of record in said suit.

10. At the time the plaintiff was appointed receiver of said Woodlawn Trust and Savings Bank, as aforesaid, a part of the assets of said Woodlawn Trust and Savings Bank were, and a part of said assets still are, in the possession of the defendant William A. Julian, either as Treasurer of the United States or as Treasurer of the Board of Trustees of the Postal Savings System, by reason of the purported pledging of said assets by said Woodlawn Trust and Savings Bank, prior to the appointment of said H. C. Vernon as receiver of said Woodlawn Trust and Savings Bank, to secure

12 deposits of postal savings funds to the credit of the Board of Trustees of the Postal Savings System in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, Illinois, as aforesaid, which deposits were made prior to the closing of the bank of said Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, as aforesaid; that plaintiff is informed and believes, and so states the fact to be, that the said pledging of said assets of said Woodlawn Trust and Savings Bank was ultra vires, illegal and void, and that plaintiff is entitled to recover the same for the use and benefit of the depositors and creditors of said Woodlawn Trust and Savings Bank.

11. By the Act of Congress hereinabove referred to, creating the Postal Savings System and a board of trustees for the control, supervision, and administration thereof, the power was conferred upon said board of trustees to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices, and, pursuant thereto, sometime prior to July 1, 1913, the Board of Trustees of the Postal Savings System promulgated and issued certain regulations for the guidance of qualified banks and others concerned, effective July 1, 1913, which regulations, as plaintiff is informed and believes, and so states the fact to be, remained and continued in force and effect until after the closing of the bank of said Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, as aforesaid. A copy of said Regulations is hereto attached, marked "Exhibit 1," and made a part of this bill of complaint.

By said Act of Congress it was, in part, further provided that postal savings funds received by postmasters at postal savings depository offices under the provisions of said Act should

13 be deposited in solvent banks, whether organized under national or state laws, being subject to national or state supervision and examination; that the board of trustees should take from such banks such security in public bonds or other securities, supported by the taxing power, as the board should prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand; and that postal savings, or any part of such funds, might be at any time withdrawn from banks for the repayment of postal savings depositors when required for

that purpose, and not exceeding thirty per centum of the amount of such funds might at any time be withdrawn by the trustees for investment in bonds or other securities of the United States.

12. Plaintiff is informed and believes, and so states the fact to be, that shortly after the Act of Congress providing for the Postal Savings System and creating said Board of Trustees became effective, the exact time being unknown to the plaintiff, said Woodlawn Trust and Savings Bank made application, in accordance with the Regulations promulgated and issued by the Board of Trustees of the Postal Savings System, to qualify for deposits of postal savings funds, and thereafter from time to time, until the closing of the bank of the Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, as aforesaid, postal savings funds were deposited to the credit of the Board of Trustees of the Postal Savings System in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, in the State of Illinois, and, to secure the repayment of such deposits, said Woodlawn Trust and Savings Bank turned over and delivered to and purported to pledge with the Treasurer of the United States various

14 bonds constituting a part of the assets of said Woodlawn Trust and Savings Bank. Plaintiff is without knowledge whether said bonds were turned over and delivered to and pledged with the Treasurer of the United States in his official capacity of Treasurer of the United States or in his official capacity of Treasurer of the Board of Trustees of the Postal Savings System, and therefore brings this suit against the defendant William A. Julian as Treasurer of the United States and also as Treasurer of the Board of Trustees of the Postal Savings System. Plaintiff is informed and believes, and so states the fact to be, that among the bonds so turned over and delivered and pledged, the said William A. Julian, as Treasurer of the United States or as Treasurer of the Board of Trustees of the Postal Savings System, still holds and retains and has possession of bonds described as follows, which are part of the assets of said Woodlawn Trust and Savings Bank:

Fifty eight (58) 3% United States Treasury Bonds, dated September 15, 1931, redeemable September 15, 1951, due September 15, 1955, in the aggregate principal amount of \$274,500, the said bonds being numbered, respectively, 248, 282, 283, 284, 285, 6600, 6601, 6604, 6605, 6607, 6609, 6611, 6613, 6614, 14419, 14420, 14476, 15367, 15368, 15369, 15370, 19939, 19957, 19959, 20215, 23290, 23580, 23682, 24004, 24043, 24044, 24048, 24049, 47895, 47896, 47897, 47898, 47899, 47900, 47901, 51866, 51867, 51868, 51869, 51870, 72300, 72301, 72302, 72303, 72304, 72305, 72306, 72307, 74545, 74546, 74547, 74548, and 74549.

Seven (7) 3½% United States Coupon Treasury Bonds, dated June 15, 1927, redeemable June 15, 1943, due June 15, 1947, in the aggregate principal amount of \$7,000, the said bonds being numbered, respectively, 00052703, 00052704, 00052705, 00052706, 00052707, 00052708, and 00052709.

Five (5) 4% Coupon Bonds of the Territory of Hawaii (Public Improvement, Series of 1912-13), dated September 3, 1912, due September 3, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 976, 977, 978, 979, and 980.

Ten (10) 4½% Coupon Bonds of the State of Alabama (Series "C" Public Road, Highway & Bridge Bonds) dated December 1, 1923, due December 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 9344, 9345, 9346, 9347, 9348, 9349, 9350, 9351, 9352, and 9353.

15 Ten (10) 4¾% Coupon Bonds of the State of Arkansas (State Toll Bridge Bonds), dated November 1, 1930, due November 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 382, 285, 386, 387, 404, 405, 406, 407, 408, and 409.

Ten (10) 4¼% Coupon Bonds of the State of California (Veterans Welfare Bond Act of 1929), dated February 1, 1931, due February 1, 1941, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, and 1169.

Ten (10) 4% Coupon Bonds of the City of Chicago, Illinois (Revolving Fund Bonds), dated August 1, 1930, due January 1, 1936, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4028, 4029, and 4030.

Ten (10) 5% Bonds of School District Number 89 (Maywood), Cook County, Illinois (School Building Bonds), dated December 31, 1930, due January 1, 1943, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 41, 42, 43, 44, 45, 51, 52, 53, 54, and 55.

Ten (10) 4% Federal Farm Loan 4% Coupon Bonds of the Federal Land Bank of Houston, Texas, dated May 1, 1928, redeemable May 1, 1938, due May 1, 1958, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, M381080, M381081, M381082, M381083, M381084, M381085, M381086, M381087, M381088, and M381089.

Ten (10) 4¾% Coupon Bonds of the State of Illinois (Service Compensation Bonds, Series B), dated October 1, 1923, due August 1, 1942, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 13113, 13114, 13115, 13116, 13117, 13118, 13119, 13120, 13121, and 13122.

Ten (10) 5½% Coupon Bonds of the County of Lenoir, North Carolina (Road and Bridge Funding Bonds), dated April 1, 1919, in the aggregate principal amount of \$10,000, said bonds numbered 87, 88, 89, 90, 91, and 92 for \$1,000 each due April 1, 1938, and said bonds numbered 97, 98, 99, and 100 for \$1,000 each due April 1, 1939.

Fifteen (15) 5% Coupon Bonds of the Board of Commissioners of the Port of New Orleans, Louisiana (Port Commission Serial Canal Gold Bonds), dated July 1, 1918, due July 1, 1957, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, A-3177, A-3178, A-3179, A-3180, A-3181, A-3182, A-3183, A-3184, A-3185, A-3186, A-3187, A-3188, A-3189, A-3190, and A-3191.

16 Ten (10) 4½% Coupon Bonds of the State of Louisiana (Highway Bonds, Series E), dated May 1, 1931, due May 1, 1943, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, and 2820.

that purpose, and not exceeding thirty per centum of the amount of such funds might at any time be withdrawn by the trustees for investment in bonds or other securities of the United States.

12. Plaintiff is informed and believes, and so states the fact to be, that shortly after the Act of Congress providing for the Postal Savings System and creating said Board of Trustees became effective, the exact time being unknown to the plaintiff, said Woodlawn Trust and Savings Bank made application, in accordance with the Regulations promulgated and issued by the Board of Trustees of the Postal Savings System, to qualify for deposits of postal savings funds, and thereafter from time to time, until the closing of the bank of the Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, as aforesaid, postal savings funds were deposited to the credit of the Board of Trustees of the Postal Savings System in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, in the State of Illinois, and, to secure the repayment of such deposits, said Woodlawn Trust and Savings Bank turned over and delivered to and purported to pledge with the Treasurer of the United States various

bonds constituting a part of the assets of said Woodlawn Trust and Savings Bank. Plaintiff is without knowledge whether said bonds were turned over and delivered to and pledged with the Treasurer of the United States in his official capacity of Treasurer of the United States or in his official capacity of Treasurer of the Board of Trustees of the Postal Savings System, and therefore brings this suit against the defendant William A. Julian as Treasurer of the United States and also as Treasurer of the Board of Trustees of the Postal Savings System. Plaintiff is informed and believes, and so states the fact to be, that among the bonds so turned over and delivered and pledged, the said William A. Julian, as Treasurer of the United States or as Treasurer of the Board of Trustees of the Postal Savings System, still holds and retains and has possession of bonds described as follows, which are part of the assets of said Woodlawn Trust and Savings Bank:

Fifty eight (58) 3% United States Treasury Bonds, dated September 15, 1931, redeemable September 15, 1951, due September 15, 1955, in the aggregate principal amount of \$274,500, the said bonds being numbered, respectively, 248, 282, 283, 284, 285, 6600, 6601, 6604, 6605, 6607, 6609, 6611, 6613, 6614, 14419, 14420, 14476, 15367, 15368, 15369, 15370, 19939, 19957, 19959, 20215, 23290, 23580, 23682, 24004, 24043, 24044, 24048, 24049, 47895, 47896, 47897, 47898, 47899, 47900, 47901, 51866, 51867, 51868, 51869, 51870, 72300, 72301, 72302, 72303, 72304, 72305, 72306, 72307, 74545, 74546, 74547, 74548, and 74549.

Seven (7) 3 $\frac{3}{8}$ % United States Coupon Treasury Bonds, dated June 15, 1927, redeemable June 15, 1943, due June 15, 1947, in the aggregate principal amount of \$7,000, the said bonds being numbered, respectively, 00052703, 00052704, 00052705, 00052706, 00052707, 00052708, and 00052709.

Five (5) 4% Coupon Bonds of the Territory of Hawaii (Public Improvement, Series of 1912-13), dated September 3, 1912, due September 3, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 976, 977, 978, 979, and 980.

Ten (10) $4\frac{1}{2}\%$ Coupon Bonds of the State of Alabama (Series "C" Public Road, Highway & Bridge Bonds) dated December 1, 1923, due December 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 9344, 9345, 9346, 9347, 9348, 9349, 9350, 9351, 9352, and 9353.

15 Ten (10) $4\frac{3}{4}\%$ Coupon Bonds of the State of Arkansas (State Toll Bridge Bonds), dated November 1, 1930, due November 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 382, 285, 386, 387, 404, 405, 406, 407, 408, and 409.

Ten (10) $4\frac{1}{4}\%$ Coupon Bonds of the State of California (Veterans Welfare Bond Act of 1929), dated February 1, 1931, due February 1, 1941, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, and 1169.

Ten (10) 4% Coupon Bonds of the City of Chicago, Illinois (Revolving Fund Bonds), dated August 1, 1930, due January 1, 1936, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4028, 4029, and 4030.

Ten (10) 5% Bonds of School District Number 89 (Maywood), Cook County, Illinois (School Building Bonds), dated December 31, 1930, due January 1, 1943, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 41, 42, 43, 44, 45, 51, 52, 53, 54, and 55.

Ten (10) 4% Federal Farm Loan 4% Coupon Bonds of the Federal Land Bank of Houston, Texas, dated May 1, 1928, redeemable May 1, 1938, due May 1, 1958, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, M381080, M381081, M381082, M381083, M381084, M381085, M381086, M381087, M381088, and M381089.

Ten (10) $4\frac{3}{4}\%$ Coupon Bonds of the State of Illinois (Service Compensation Bonds, Series B), dated October 1, 1923, due August 1, 1942, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 13113, 13114, 13115, 13116, 13117, 13118, 13119, 13120, 13121, and 13122.

Ten (10) $5\frac{1}{2}\%$ Coupon Bonds of the County of Lenoir, North Carolina (Road and Bridge Funding Bonds), dated April 1, 1919, in the aggregate principal amount of \$10,000, said bonds numbered 87, 88, 89, 90, 91, and 92 for \$1,000 each due April 1, 1938, and said bonds numbered 97, 98, 99, and 100 for \$1,000 each due April 1, 1939.

Fifteen (15) 5% Coupon Bonds of the Board of Commissioners of the Port of New Orleans, Louisiana (Port Commission Serial Canal Gold Bonds), dated July 1, 1918, due July 1, 1957, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, A-3177, A-3178, A-3179, A-3180, A-3181, A-3182, A-3183, A-3184, A-3185, A-3186, A-3187, A-3188, A-3189, A-3190, and A-3191.

16 Ten (10) $4\frac{1}{2}\%$ Coupon Bonds of the State of Louisiana (Highway Bonds, Series E), dated May 1, 1931, due May 1, 1943, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, and 2820.

Eight (8) $4\frac{1}{2}\%$ Coupon Bonds of Montgomery County, Ohio (Edison Avenue Improvement Bonds), dated April 1, 1930, due October 1, 1936, in the aggregate principal amount of \$8,000, the said bonds being numbered, respectively, 43, 44, 45, 46, 47, 48, 49, and 50.

Ten (10) 5% Coupon Bonds of the Proviso Township High School District No. 209, Illinois (School Building Bonds), dated July 1, 1929, due July 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

Fifteen (15) 4% Bonds of the City of Seattle, Washington (Seattle Bridge Bonds, Series C-2, 1931), dated September 1, 1931, due September 1, 1959, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, and 436.

Ten (10) $4\frac{3}{4}\%$ Coupon Bonds of the State of South Carolina (State Highway Certificate of Indebtedness), dated December 1, 1930, due December 1, 1949, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 16367, 16368, 16369, 16370, 16371, 16596, 16597, 16598, 16599, and 16600.

Five (5) 4% Bonds of the City of Toledo, Ohio (Grade Elimination Bonds, Fourth Series), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 74, 75, 76, 77, and 78.

Five (5) 4% Bonds of the City of Toledo, Ohio (University Farm Building Refunding Bonds), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 42, 43, 44, 45, and 46.

Ten (10) $5\frac{1}{2}\%$ Bonds of the City of Tulsa, Oklahoma (Sewer Mains and Sub-Main Bonds), dated July 1, 1921, due July 1, 1946, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 276, 282, 283, 284, 285, 286, 287, 288, 289, and 290.

Five (5) 4% Coupon Bonds of the City of Waterloo, Iowa (Eighteenth Street Bridge Bonds), dated July 1, 1931, due July 1, 1939, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 34, 35, 36, 37, and 38.

Five (5) 5% Coupon Bonds of the County of Wayne, North Carolina (School Funding Bonds), dated July 1, 1931, due July 1, 1936, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 16, 17, 18, 19, and 20.

17 Five (5) $4\frac{1}{2}\%$ Coupon Bonds of the City of West Allis, Wisconsin (Storm Sewer Bonds for the year 1931), dated March 1, 1931, due March 1, 1944, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 13, 14, 15, 16, and 17.

Plaintiff is informed and believes, and so states the fact to be, that all of said bonds except said $3\frac{3}{8}\%$ United States Coupon Treasury Bonds, dated June 15, 1927, in the aggregate principal amount of \$7,000, which were delivered to and pledged with the Treasurer of the United States on or about July 2, 1927, and said 4% Coupon Bonds of the Territory of Hawaii (Public Improvement, Series of 1912-13), dated September 3, 1912, in the aggregate principal amount of \$5,000, which were delivered to and pledged with the Treasurer of

the United States on or about October 22, 1913, were delivered to and pledged with the Treasurer of the United States, as aforesaid, during the years 1931 and 1932, and that the said pledging or purported pledging of each and all of said bonds was ultra vires, illegal and void.

13. Plaintiff is informed and believes, and so states the fact to be, that at the time of the appointment of the said H. C. Vernon as receiver of said Woodlawn Trust and Savings Bank, as aforesaid, to wit, on July 1, 1932, the then Treasurer of the United States, either in his capacity of Treasurer of the United States or in his capacity of Treasurer of the Board of Trustees of the Postal Savings System, held in his possession certain other bonds which said Woodlawn Trust and Savings Bank had theretofore turned over and delivered to and purported to pledge with the Treasurer of the United States to secure the repayment of deposits of postal savings funds to the credit of the Board of Trustees of the Postal Savings System in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, in the State of Illinois, including, as plaintiff is informed and believes, and so states the fact to be, bonds described as

18 follows:

Five (5) 4½% bonds of Lake View Township, Illinois (Park Improvement bonds), due July 15, 1934, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 241, 242, 243, 244, and 245.

Four (4) 5% bonds of Proviso Township, Illinois (School Building bonds), due July 1, 1932, in the aggregate principal amount of \$4,000, the said bonds being numbered, respectively, 1, 2, 3, and 407; and

Two (2) 5% bonds of Tuscola Union School District, Illinois, No. 82, due February 1, 1935, in the aggregate principal amount of \$2,000, the said bonds being numbered, respectively, 11 and 12,

all of which bonds matured and the principal amounts thereof were paid to said defendants, or to some one or more of them, after the appointment of said H. C. Vernon as receiver of said Woodlawn Trust and Savings Bank, and the proceeds of said bonds have not been paid by said defendants, or by any of them, to the said H. C. Vernon or to the plaintiff as receiver of said Woodlawn Trust and Savings Bank.

14. Plaintiff is informed and believes, and so states the fact to be, that after the closing of the bank of said Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, as aforesaid, the said defendants or some of them have, or some one of them has, collected and received various sums of money for and on account of interest on the said bonds pledged or purported to be pledged, as aforesaid, the exact amount of which is unknown to the plaintiff.

15. At the time that the said Woodlawn Trust and Savings Bank was closed, on, to wit, June 22, 1932, the deposit of postal savings funds to the credit of the Board of Trustees of the Postal Savings System in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, in the State of Illinois, together with interest thereon, amounted to \$454,793.04, no part of which has been repaid.

19 16. The highest court of appellate jurisdiction in the State of Illinois, towit, the Supreme Court of the State of Illinois, in the case entitled *The People ex rel. Oscar Nelson, Auditor of Public Accounts of the State of Illinois vs. The Wiersema State Bank, a corporation (Adolph S. Helmquist, Receiver for The Wiersema State Bank, a corporation, appellee, vs. Fernwood Park District, an Illinois Municipal Corporation, Appellant)*, at the June 1935 term of said court (rehearing denied at the October 1935 term of said court), has decided that banks organized under the statutes of the State of Illinois have never possessed, and do not now possess, the power of pledging assets to secure deposits of money made in such banks (with the possible exception of deposits made by the State Treasurer and other custodians of State funds and by receivers of closed banks and deposits of Chicago Park District funds), that the pledging of assets by such banks to secure deposits of money made in such banks, with the possible exceptions above noted, is ultra vires and void, and that the receiver of any such bank is entitled to recover the assets so pledged without paying the depositor the amount of the deposits which such assets were pledged to secure. A copy of the opinion of the Supreme Court of the State of Illinois in which such decision appears is hereto attached, marked "Exhibit 2," and made a part of this bill of complaint.

17. Plaintiff is informed and believes, and so states the fact to be, that said Woodlawn Trust and Savings Bank had no power or authority under the laws of the State of Illinois, as hereinabove more fully shown, to pledge any of its assets to secure the deposit of Postal Savings funds, and that the purported pledging of bonds to secure the deposit of Postal Savings funds, as hereinabove set forth, was ultra vires, illegal and void and contrary to the public policy of the State of Illinois, and that said bonds now held
20 by the defendant William A. Julian, as aforesaid, and all moneys received by the defendants or by any of them since the said closing of said Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, on account of the principal of or interest on any bonds so pledged by said Woodlawn Trust and Savings Bank to secure the deposit of Postal Savings funds belong to the plaintiff and should be ordered turned over and delivered and paid to the plaintiff as receiver of said Woodlawn Trust and Savings Bank for the benefit of all creditors and depositors of said bank.

18. Plaintiff is without remedy in the premises except in a court of equity.

Wherefore plaintiff prays:

1. That writs of subpoena be issued, directed to the defendants and each of them, commanding them and each of them to appear and make answer hereto.

2. That a decree be entered and rendered against said defendants declaring that the pledging of all of said bonds by said Woodlawn Trust and Savings Bank with the Treasurer of the United States, either in the capacity of Treasurer of the United States or in the capacity of Treasurer of the Board of Trustees of the Postal Savings System, to secure deposits of Postal Savings funds in the bank

operated by said Woodlawn Trust and Savings Bank, was ultra vires and void, and that plaintiff as receiver of said Woodlawn Trust and Savings Bank is entitled to the possession of all of said bonds now held by the defendant William A. Julian as Treasurer of the United States or as Treasurer of the Board of Trustees of the Postal Savings System, and that the claims of all of said defendants and of each of them to said bonds are null and void as against the plaintiff.

3. That a decree be entered and rendered against the defendant William A. Julian ordering and directing him to turn over and deliver to the plaintiff all bonds, and in particular the bonds particularly described in the foregoing paragraph numbered 12, now

21 held by him in the capacity of Treasurer of the United States or in the capacity of Treasurer of the Board of Trustees of the Postal Savings System, which were turned over and delivered by said Woodlawn Trust and Savings Bank to and pledged with him or any of his predecessors in office to secure the deposit of postal savings funds to the credit of the Board of Trustees of the Postal Savings System in the bank formerly operated by said Woodlawn Trust and Savings Bank.

4. That the defendants, and each of them, be required to account for all moneys received by them, or by any of them, since June 22, 1932, for or on account of the principal of or interest on any bonds pledged by said Woodlawn Trust and Savings Bank with the defendant William A. Julian either as Treasurer of the United States or as Treasurer of the Board of Trustees of the Postal Savings System or any of his predecessors in office to secure the deposit of Postal Savings funds in the bank formerly operated by said Woodlawn Trust and Savings Bank, and that a decree be entered and rendered against such of said defendants as the court shall find has or have received any of said moneys, ordering and directing said defendant or defendants to pay to the plaintiff the amount or amounts so received as shown by such accounting.

5. That the plaintiff may have such other and further relief in the premises as equity may require and to the court may seem meet and proper.

Verification of the answers of the defendants, and of the answer of each of them, is hereby expressly waived.

WILLIAM L. O'CONNELL,
*As Receiver of Woodlawn Trust
and Savings Bank, a corporation.*

COOKE, SULLIVAN & RICKS,
LLEWELLYN A. LUCE,

Attorneys for Plaintiff.

HOMER D. DINES,

*A member of the firm of Cooke, Sullivan & Ricks and one of
the solicitors of record for the Plaintiff.*

22 STATE OF ILLINOIS
County of Cook, ss:

William L. O'Connell, being first duly sworn, on oath deposes and says that he is the person whose name is subscribed to the foregoing bill of complaint as receiver of Woodlawn Trust and Savings Bank,

a corporation; that he is familiar with the contents of said bill of complaint and verily believes the facts stated therein to be true.

WILLIAM L. O'CONNELL

Subscribed and sworn to before me this 22 day of October 1935.

[SEAL]

JAMES T. DILLON,
Notary Public.

23 *Motion to dismiss bill of complaint*

Filed Nov. 18, 1935

* * * * *

Now come James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, Trustees of the Postal Savings System, and William A. Julian, Treasurer of the United States of America, and Treasurer of the Board of Trustees of the Postal Savings System, named defendants in their respective official capacities as aforesaid, and move the Court to dismiss the bill of complaint herein filed on the following grounds:

1. The suit is in essence one against the United States which has not consented to be sued in a proceeding such as this.
2. The United States is an indispensable party to this suit.
3. The bill of complaint sets forth no cause of action against the defendants and is wanting in equity.
4. The plaintiff has a full, adequate, and complete remedy at law.

LESLIE C. GARNETT,
United States Attorney,

H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for defendants.

24 *Order denying motion to dismiss*

Filed Jan. 24, 1936

* * * * *

This cause coming on to be heard upon the joint motion of the defendants, James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, as Trustees of the Postal Savings System, William A. Julian, as Treasurer of the United States of America, and William A. Julian, as Treasurer of the Board of Trustees of the Postal Savings System, to dismiss the bill of complaint herein filed and said motion having been argued and considered, it is by the Court this 24th day of January 1936, ordered that the said motion be and the same is hereby denied, with leave to the said defendants to answer within 15 days from the date hereof.

ALFRED A. WHEAT,
Chief Justice.

25 *Answer of defendants*

Filed Feb. 11, 1936

* * * * *

Now come James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, Trustees of the Postal Savings System, and William A.

Julian, Treasurer of the United States of America, and Treasurer of the Board of Trustees of the Postal Savings System, named defendants in their respective official capacities as aforesaid in the above entitled cause, and for answer to the Bill of Complaint herein filed, or to such part or parts thereof as they are advised it is proper for them to answer, answer and say:

1. The said defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered 1 of the said bill of complaint.

2. The said defendants admit the allegations contained in paragraph numbered 2 of the said bill of complaint.

3. The said defendants are without knowledge or information concerning the citizenship and residence of the plaintiff; they admit the allegation of their own citizenship and official residence.

26 4. The said defendants are without knowledge or information as to the truth of the allegations contained in paragraph numbered 4 of the said bill of complaint.

5. That said defendants admit that the excerpt in paragraph numbered 5 is a correct quotation of section 5 of article XI of the Constitution of the State of Illinois but as to when it was in force they are without knowledge or information.

6-8. Defendants admit the excerpts of the laws of the State of Illinois set forth in paragraphs numbered 6 to 8, inclusive, of the bill of complaint are correctly quoted therein, but are without knowledge or information as to the time of the convening and adjournment of the several sessions of the Legislature of Illinois at which the various quoted excerpts were enacted into law, or as to whether said legislation was submitted to and approved by vote at the several general elections as alleged in said paragraphs. Said defendants aver that the allegation contained in the last subparagraph of paragraph numbered 7 that the excerpts quoted in said paragraph were the only Sections of the several Acts conferring powers on banking corporations up to the time of the appointment of a receiver for the Woodlawn Trust and Savings Bank, is a conclusion of law to which they are not to make answer.

9. Answering paragraph numbered 9, the defendants admit that the Woodlawn Trust and Savings Bank during the time of the transactions, matters, and things complained of in the bill of complaint, operated a State Bank in the City of Chicago, up to the time of its closing and the taking over of control of its property and assets by the Auditor of Public Accounts of the State of Illinois; as to the other allegations in said paragraph contained, said defendants are without knowledge or information.

10. Defendants admit the allegations contained in paragraph numbered 10 of the said bill of complaint except the allegation that the pledging of the assets of the said bank to secure deposits of
27 postal savings funds was ultra vires, illegal, and void, as to which defendants aver that said allegation is a conclusion of law to which they are not required to make answer, nevertheless they deny said allegation and on the contrary aver that said action

by said Bank was within the power and authority of said Bank and in all respects valid and lawful; they also deny the asserted right of plaintiff to recover said pledged assets.

11. Answering paragraph numbered 11 of the said bill of complaint, defendants admit that the Act of Congress referred to therein created the Postal Savings System but aver that the provisions of said Act specified in said paragraph are not all the applicable provisions of said Act, said Act having been amended and supplemented in important particulars and defendants respectfully refer the Court to said Act as amended and supplemented for full information as to the terms, conditions, and provisions thereof.

Further answering said paragraph defendants admit that the copy of the "Regulation for the Guidance of Qualified Banks and Others Concerned" governing the Postal Savings System and deposits of postal savings funds attached to the Bill of Complaint as Exhibit 1 is a true copy of said regulations which were in effect July 1, 1913, but defendants aver that said regulations were subsequently and from time to time amended, altered, and modified; that a copy of the Regulations in force at the time of closing of the Woodlawn Trust and Savings Bank is hereto attached marked Exhibit No. 1 and made a part of this answer.

12. Answering paragraph numbered 12 of the Bill of Complaint, defendants aver that by a communication dated December 12, 1911, the said Woodlawn Trust and Savings Bank made application to the Trustees of the Postal Savings System for the deposit with it of postal savings funds, in accordance with the law and regulations governing such deposits in Banks; that said application was granted and thereafter, from time to time, postal savings funds were deposited in said Bank; that to secure the repayment thereof, the said

28 Bank pledged and delivered to the Treasurer of the United States, who was also Treasurer of the Board of Trustees of the Postal Savings System, various bonds. They admit that the said Treasurer, as such, has in his possession the bonds specified in said paragraph, except the five 4% Coupon Bonds of the Territory of Hawaii, as to which they say that said bonds were redeemed and the proceeds thereof principal and interest, in amount of \$5,098.88 were credited to the Board of Trustees of the Postal Savings System. In respect of said bonds so enumerated in said paragraph, defendants say that the principal amount of the fifty-eight 3% United States Treasury bonds referred to in the first paragraph of the enumeration is \$267,500 instead of \$274,500, as therein stated, and said bonds are redeemable September 15, 1951, and not December 15, 1951, as alleged; that of the ten 5% Bonds of School District Number 89 (Maywood), Cook County, Illinois, specified in the eighth paragraph of the enumeration, five bonds, numbered 51, 52, 53, 54, and 55 are due January 1, 1944, instead of January 1, 1943, as alleged.

They deny that such pledging and delivery were ultra vires, illegal, and void, but on the contrary aver that said pledging and delivery were within the power and authority of said Bank and in all respects lawful and valid.

13. The defendants admit the allegations contained in paragraph numbered 13 of the bill of complaint, except that they are without knowledge or information as to whether the said H. C. Vernon was at the times mentioned in said paragraph Receiver of the Woodlawn Trust and Savings Bank.

14-15. The defendants admit the allegations contained in paragraph numbered 14 and 15 of the said bill of complaint.

16. Answering paragraph numbered 16, the defendants aver that they have no knowledge or information concerning the decision of the Supreme Court of the State of Illinois other than that contained therein and in the copy thereof made Exhibit 2 to the bill; as to

29 what was decided in that cause, defendants submit that the record and opinion are the best evidence thereof; but defendants say that the said decision is inapplicable to the case presented by plaintiff's bill and in any event has no binding force in this suit. Further, defendants respectfully submit that the said decision is not and ought not to be considered as controlling in this suit because not in consonance with the weight of authority or correct under established law.

17. Answering paragraph numbered 17, the defendants submit that the allegations therein contained are conclusions of law which they are not required to answer; nevertheless, they deny that the said Woodlawn Trust and Savings Bank had no power or authority to pledge its assets to secure the deposited Postal Savings funds; deny that said pledging was ultra vires, illegal and void, and contrary to the public policy of the State of Illinois; deny that the bonds pledged and in the custody of defendant Julian and any moneys received as principal and interest thereon belong to plaintiff. On the contrary, defendants aver that the pledging was within the power and authority of said bank, and in all respect was lawful and valid; that the retention by defendants, or any of them, of the bonds so pledged and of any of the proceeds thereof was and is proper, lawful, and authorized both by the applicable federal law and the regulations issued thereunder and the special contract, undertaking, and agreement entered into between the said Bank and the Trustees of the Postal Savings System, in respect to and as a condition of the making of said deposits in the said Bank.

18. Answering paragraph numbered 18, defendants submit that the allegation therein contained states a conclusion of law to which they are not required to make answer; nevertheless, they deny the same and aver that the said plaintiff, if he has any cause of action, has a full, adequate, and complete remedy at law.

Further answering the said bill of complaint, the defendants say that in and by the Act of June 25, 1910 (c. 386, 36 Stat. 816, entitled "An Act to establish postal savings depositories for

30 depositing savings at interest with the Security of the Government for repayment thereof, and for other purposes," the Congress of the United States established postal savings depositories offices and created a board of trustees for the control, supervision, and administration thereof and of the funds received as deposits, to consist of the Postmaster General, the Secretary of the Treasury, and the Attorney General, severally, acting ex officio; said board was

empowered to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices.

The said Act in Section 9 thereof provides in part as follows: "That postal savings funds received under the provisions of this Act shall be deposited in solvent banks, whether organized under national or state laws, being subject to national or state supervision and examination. * * * The board of Trustees shall take from such banks such security in public bonds or other securities, supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. The funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein * * * willing to receive such deposits under the terms of this Act and the regulations made by authority thereof. * * * For the purpose of this Act * * * the word "bank" shall be held to include savings banks and trust companies doing a banking business."

Section 16 of said Act declared "The faith of the United States is solemnly pledged to the payment of the deposits made in postal savings depository offices, with accrued interest thereon as herein provided."

The Act of May 18, 1916, c. 126, 39 Stat. 159, amended the Act of June 25, 1910, and in respect of deposits for postal savings funds provided that such deposits could be made in National or State banks "whether members or not of the Federal Reserve System" and in respect of kind of security to be required of such banks added to the kinds of securities already specified securities "authorized by Act of Congress."

31 That the said Act of June 25, 1910, constituted full authority for the receipt and granting by the Board of Trustees of the Postal Savings System of the application made December 12, 1911, by the Woodlawn Trust and Savings Bank for the depositing with it of postal savings funds and said Act as supplemented and amended constituted and was authority for the depositing from time to time in said Bank of other deposits; and for requiring the giving by said Bank of security to safeguard and insure the said deposits.

Defendants further aver that in authorizing the said deposits to be made in the said Bank and in exacting the pledging and in the taking and receiving of the security from said Bank the said Board of Trustees acted in full and strict compliance with the authority and powers conferred upon them by the Congress as aforesaid.

Further, defendants aver that the postal savings funds deposited in said Bank, pursuant to its application therefor under the said Act of Congress as amended and supplemented, constituted, were and are a special deposit to the return of which the Board of Trustees of the Postal Savings System is entitled as a prior and superior and preferred claim as against plaintiff as Receiver, and those whose interest or interests he represents; that under the express terms of the contract, undertaking and agreement entered into by the said Bank in respect of and as a condition for the said deposits, the Board of Trus-

tees and the Treasurer of the United States are entitled to the possession of the bonds and securities pledged by said Bank until the amount on deposit to the credit of the Postal Savings funds account of the Postal Savings System is paid in full.

The defendants further aver that the action of the said Bank in receiving the deposits of Postal Savings funds and in giving, pledging and delivering the said securities from time to time was done with full knowledge on its part of the provisions and requirements of the said Act of Congress, and was continued for more than twenty years;

32 that said action and course of dealing in respect of said funds and securities was well known to the officials of the State of

Illinois charged with the inspection and supervision of banking institutions and was not objected to but was tacitly approved by them, and like action and conduct was indulged in by other state banking institutions of Illinois in respect of such deposits and of giving security and has not been questioned or challenged until the filing of this suit. Further, that the legislature of the State of Illinois in the amendments of the banking laws referred to in the bill of complaint, was aware of the practice of giving security to safeguard postal savings funds and of the federal enactments respecting such deposits and by failing to expressly prohibit such action by state banking institutions sanctioned and approved it.

Further, defendants say, that if, as alleged in the bill of complaint, the said Woodlawn Trust and Savings Bank was without authority to give, pledge, and deliver the securities, pledged as aforesaid, then the receipt of said deposits under the contract and agreement made by it with the said Board of Trustees of the Postal Savings System, was wrongful and fraudulent; that by so receiving the said deposits, the said Bank became, was, and is, a trustee ex maleficio of said deposits, and it is the duty of the plaintiff herein to return said deposits to the Board of Trustees of the Postal Savings System, and said return is a condition precedent to the right of return of the securities pledged or the proceeds thereof.

For a further answer and defense to the said bill of complaint, defendants say that the plaintiff ought not to have and maintain this suit because:

1. The United States is a necessary and indispensable party to the suit, since it appears that the defendants and their predecessors were in respect of the matters and things complained of against them, acting as agents or an agency of the United States in the conduct of a governmental function, designated as and made such agents or agency by the Act of Congress of June 25, 1910, as amended and supplemented; that in the matters and things complained of they and
33 each of them, acted in strict compliance with the statutory authority conferred upon them; that as such, they have no personal interest or duty in the premises, and

2. The suit is in essence one against the United States, since the transactions complained of were carried on as a governmental function, the United States is obligated to make good any deficiency in the said postal savings funds, and a decree for plaintiff would materially affect the United States in respect of its resources and revenues.

Wherefore having made full answer, defendants pray that the bill of complaint be dismissed with costs against the plaintiff.

JAMES A. FARLEY,
Postmaster General,
 HENRY MORGENTHAU, Jr.,
Secretary of the Treasury,
 HOMER S. CUMMINGS,
Attorney General, Constituting the Board
of Trustees of the Postal Savings System.
 W. A. JULIAN,
Treasurer of the United States
and Treasurer of the Board of Trustees
of the Postal Savings System.
 LESLIE C. GARNETT,
United States Attorney,
 H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for Defendants.

DISTRICT OF COLUMBIA, ss:

Henry Morgenthau, Jr., being first duly sworn deposes and says that he is Secretary of the Treasury and ex officio a member of the Board of Trustees of the Postal Savings System and as such member named a party defendant in the above entitled cause; that he makes this affidavit in behalf of himself and the other members of the Board of Trustees of the Postal Savings System; that he has read the foregoing answer by him subscribed and verily believes the facts therein stated to be true.

HENRY MORGENTHAU, Jr.

34 Subscribed and sworn to before me this 8th day of February 1936.

[SEAL]

SAMUEL H. MARKS,
Notary Public, D. C.

DISTRICT OF COLUMBIA, ss:

William A. Julian, being first duly sworn, deposes and says that he is Treasurer of the United States and Treasurer of the Board of Trustees of the Postal Savings System, and as such made a defendant in the above entitled cause; that he has read the foregoing answer by him subscribed and verily believes the facts therein stated to be true.

W. A. JULIAN.

Subscribed and sworn to before me this 8th day of February 1936.

[SEAL]

ELLA F. VANZANDT,
Notary Public, D. C.

35 *Order granting motion of plaintiff to substitute party plaintiff*

Filed Jan. 1937

* * * * *

Upon the suggestion of the death of William L. O'Connell in Chicago, Illinois, on the 24th day of July 1936 and upon motion by counsel for plaintiff in this cause that Charles H. Albers, the duly

appointed successor to the said William L. O'Connell, Deceased, as Receiver of Woodlawn Trust and Savings Bank, a corporation, 7 South Dearborn Street, Chicago, Illinois, be substituted as plaintiff in this cause, and said motion having been considered, it is by the Court this 23d day of January 1937 ordered that the said motion of plaintiff be granted and that Charles H. Albers as Receiver of Woodlawn Trust and Savings Bank, a corporation, be substituted as party plaintiff in this cause.

JESSE C. ADKINS, *Justice.*

We consent

J. J. WILSON,

Asst. U. S. Atty. for all Defts.

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Findings of fact and conclusions of law

This cause came on for trial on March 30, 1938, before the Court, sitting in equity; plaintiff appearing by Homer D. Dines and John D. Cooke, Jr., of the firm of Cooke, Sullivan and Ricks, and by Llewellyn A. Luce, and the defendants appearing by Leslie C. Garnett, Special Assistant to the Attorney General, and H. L. Underwood, Assistant United States Attorney; and evidence, both oral and documentary, having been received and the Court having fully considered the same and the arguments of counsel hereby makes the following findings of fact and conclusions of law:

Findings of fact

1. William L. O'Connell, the original plaintiff herein, was, at the time of the commencement of this suit, Receiver of Woodlawn Trust and Savings Bank, an Illinois banking corporation, by virtue of his appointment as such Receiver by the Auditor of Public Accounts of the State of Illinois pursuant to the statutes of the State of Illinois. The said William L. O'Connell was, at the time of the commencement of this suit, a citizen of the United States and
37 a resident of Chicago, Illinois. He died July 24, 1936, and on the same day Charles H. Albers was duly designated and appointed Receiver of said Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois to succeed the said William L. O'Connell, and thereupon duly qualified as such receiver, and by order entered herein on January 23, 1937, the said Charles H. Albers, as Receiver of Woodlawn Trust and Savings Bank, was substituted as party plaintiff in this cause. The said Charles H. Albers was, at the time of his appointment as such receiver, and still is a citizen of the United States and a resident of Chicago, Illinois.

2. James A. Farley is the Postmaster General of the United States, Henry Morgenthau, Jr., is the Secretary of the Treasury of the United States, and Homer S. Cummings is the Attorney General of the United States, and the said James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings are, ex officio, the persons constituting the Board of Trustees of the Postal Savings System, created by the Act of Congress entitled, "An Act to establish postal savings depositories for depositing savings at interest with the security of the

Government for repayment thereof, and for other purposes," approved June 25, 1910. The defendant, William A. Julian, is Treasurer of the United States. Each of said defendants was, at the time of the commencement of this suit, and still is, a citizen of the United States and his official residence is the City of Washington, in the District of Columbia.

3. The Woodlawn Trust and Savings Bank was duly organized as a corporation on April 27, 1905, under and by virtue of an Act of the General Assembly of the State of Illinois entitled "An Act concerning corporations with banking powers," approved June 16, 1887, in force December 6, 1888, and the amendments thereto.

4. From and after its said organization as a corporation, up to and until June 22, 1932, the said Woodlawn Trust and Savings Bank operated a State bank in the City of Chicago, in Cook County, Illinois, under and pursuant to the authority conferred upon it by the said Act of the General Assembly of the State of Illinois entitled "An Act concerning corporations with banking powers," and the amendments thereto and under and pursuant to the authority conferred upon it by an Act of the General Assembly of the State of Illinois entitled "An Act to revise the law with relation to banks and banking," approved June 23, 1919, in force December 1, 1920, and the amendments thereto. On or about June 22, 1932, the Auditor of Public Accounts of the State of Illinois found that the capital stock of said Woodlawn Trust and Savings Bank had become impaired and that such impairment could not be made good, and thereupon took control of said bank and thereafter, on July 1, 1932, appointed H. C. Vernon to act as Receiver thereof. Said H. C. Vernon acted as such receiver until January 13, 1934, on which date, by reason of his resignation the Auditor of Public Accounts of the State of Illinois appointed the original plaintiff herein, William L. O'Connell, as the successor receiver of said Woodlawn Trust and Savings Bank and the said William L. O'Connell thereafter acted as such Receiver until his death on July 24, 1936.

5. On or about December 12, 1911, said Woodlawn Trust and Savings Bank made application to the Trustees of the Postal Savings System for deposits of postal savings funds in the bank operated by said Woodlawn Trust and Savings Bank, which application was granted, and thereafter from time to time, until the closing of the bank of the Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, on June 22, 1932, postal savings funds were deposited to the credit of the Board of Trustees of the Postal Savings System in the said bank operated by said Woodlawn Trust and Savings Bank and, to secure the repayment of such deposits, said Woodlawn Trust and Savings Bank turned over and delivered to the Treasurer of the United States various bonds which were part of the assets of said Woodlawn Trust and Savings Bank. Among the bonds so turned over and delivered, the said William A. Julian, as Treasurer of the United States, still holds and retains and has possession of bonds described as follows:

Fifty-eight (58) 3% United States Treasury Bonds, dated September 15, 1931, redeemable September 15, 1951, due September 15, 1955, in the aggregate principal amount of \$267,500, the said bonds

being numbered, respectively, 248, 282, 283, 284, 285, 6600, 6601, 6604, 6605, 6607 6609, 6611, 6613, 6614, 14419, 14420, 14476, 15367, 15368, 15369, 15370, 19939, 19957, 19959, 20215, 23290, 23580, 23682, 24004, 24043, 24044, 24048, 24049, 47895, 47896, 47897, 47898, 47899, 47900, 47901, 51866, 51867, 51868, 51869, 51870, 72300, 72301, 72302, 72303, 72304, 72305, 72306, 72307, 74545, 74546, 74547, 74548, and 74549.

Seven (7) $3\frac{3}{8}\%$ United States Coupon Treasury Bonds, dated June 15, 1927, redeemable June 15, 1943, due June 15, 1947, in the aggregate principal amount of \$7,000, the said bonds being numbered, respectively, 00052703, 00052704, 00052705, 00052706, 00052707, 00052708, and 00052709.

Ten (10) $4\frac{1}{2}\%$ Coupon Bonds of the State of Alabama (Series "C" Public Road, Highway & Bridge Bonds), dated December 1, 1923, due December 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 9344, 9345, 9346, 9347, 9348, 9349, 9350, 9351, 9352, and 9353.

Ten (10) $4\frac{3}{4}\%$ Coupon Bonds of the State of Arkansas (State Toll Bridge Bonds) dated November 1, 1930, due November 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 382, 385, 386, 387, 404, 405, 406, 407, 408, and 409.

Ten (10) $4\frac{1}{4}\%$ Coupon Bonds of the State of California (Veterans' Welfare Bond Act of 1929), dated February 1, 1931, due February 1, 1941, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, and 1169.

Ten (10) 4% Coupon Bonds of the City of Chicago, Illinois (Revolving Fund Bonds), dated August 1, 1930, due January 1, 1936, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4028, 4029, and 4030.

Ten (10) 5% Bonds of School District Number 89 (Maywood), Cook County, Illinois (School Building Bonds), dated December 31, 1930, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 41, 42, 43, 44, 45, 51, 52, 53, 54, and 55, said bonds numbered 41 to 45, both inclusive, being due January 1, 1943, and bonds numbered 51 to 55, both inclusive, being due January 1, 1944.

40 Ten (10) 4% Federal Farm Loan 4% Coupon Bonds of the Federal Land Bank of Houston, Texas, dated May 1, 1928, redeemable May 1, 1938, due May 1, 1958, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, M381080, M381081, M381082, M381083, M381084, M381085, M381086, M381087, M381088, and M381089.

Ten (10) $4\frac{3}{4}\%$ Coupon Bonds of the State of Illinois (Service Compensation Bonds, Series B), dated October 1, 1923, due August 1, 1942, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 13113, 13114, 13115, 13116, 13117, 13118, 13119, 13120, 13121, and 13122.

Ten (10) $5\frac{1}{2}\%$ Coupon Bonds of the County of Lenoir, North Carolina (Road and Bridge Funding Bonds), dated April 1, 1919, in the aggregate principal amount of \$10,000, said bonds numbered

87, 88, 89, 90, 91, and 92 for \$1,000 each due April 1, 1938, and said bonds numbered 97, 98, 99, and 100 for \$1,000 each due April 1, 1939.

Fifteen (15) 5% Coupon Bonds of the Board of Commissioners of the Port of New Orleans, Louisiana (Port Commission Serial Canal Gold Bonds), dated July 1, 1918, due July 1, 1957, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, A-3177, A-3178, A-3179, A-3180, A-3181, A-3182, A-3183, A-3184, A-3185, A-3186, A-3187, A-3188, A-3189, A-3190, and A-3191.

Ten (10) 4½% Coupon Bonds of the State of Louisiana (Highway Bonds, Series E), dated May 1, 1931, due May 1, 1943, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, and 2820.

Eight (8) 4½% Coupon Bonds of Montgomery County, Ohio (Edison Avenue Improvement Bonds), dated April 1, 1930, due October 1, 1936, in the aggregate principal amount of \$8,000, the said bonds being numbered, respectively, 43, 44, 45, 46, 47, 48, 49, and 50.

Ten (10) 5% Coupon Bonds of the Proviso Township High School District No. 209, Illinois (School Building Bonds), dated July 1, 1929, due July 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

Fifteen (15) 4% Bonds of the City of Seattle, Washington (Seattle Bridge Bonds, Series G-2, 1931), dated September 1, 1931, due September 1, 1959, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, and 436.

41 Ten (10) 4¾% Coupon Bonds of the State of South Carolina (State Highway Certificate of Indebtedness), dated December 1, 1930, due December 1, 1949, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 16367, 16368, 16369, 16370, 16371, 16596, 16597, 16598, 16599, and 16600.

Five (5) 4% Bonds of the City of Toledo, Ohio (Grade Elimination Bonds, Fourth Series), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 74, 75, 76, 77, and 78.

Five (5) 4% Bonds of the City of Toledo, Ohio (University Farm Building Refunding Bonds), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 42, 43, 44, 45, and 46.

Ten (10) 5½% Bonds of the City of Tulsa, Oklahoma (Sewer Mains and Sub-Main Bonds), dated July 1, 1921, due July 1, 1946, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 276, 282, 283, 284, 285, 286, 287, 289, and 290.

Five (5) 4% Coupon Bonds of the City of Waterloo, Iowa (Eighteenth Street Bridge Bonds), dated July 1, 1931, due July 1, 1939, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 34, 35, 36, 37, and 38.

Five (5) 5% Coupon Bonds of the County of Wayne, North Carolina (School Funding Bonds), dated July 1, 1931, due July 1, 1936, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 16, 17, 18, 19, and 20.

Five (5) 4½% Coupon Bonds of the City of West Allis, Wisconsin (Storm Sewer Bonds for the year 1931), dated March 1, 1931, due March 1, 1944, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 13, 14, 15, 16, and 17.

6. At the time of the appointment of the said H. C. Vernon as receiver of said Woodlawn Trust and Savings Bank, on July 1, 1932, the then Treasurer of the United States held in his possession certain other bonds which said Woodlawn Trust and Savings Bank had theretofore turned over and delivered to the Treasurer of the United States to secure the repayment of deposits of postal savings funds to the credit of the Board of Trustees of the Postal Savings System in said Woodlawn Trust and Savings Bank, which bonds are described as follows:

42 Five (5) 4½% bonds of Lake View Township, Illinois (Park Improvement bonds), due July 15, 1934, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 241, 242, 243, 244, and 245.

Four (4) 5% bonds of Proviso Township, Illinois (School Building Bonds), due July 1, 1932, in the aggregate principal amount of \$4,000, the said bonds being numbered, respectively, 1, 2, 3, and 407.

Two (2) 5% bonds of Tuscola Union School District, Illinois, No. 82, due February 1, 1935, in the aggregate principal amount of \$2,000, the said bonds being numbered, respectively, 11 and 12.

Five (5) 4% Coupon Bonds of the Territory of Hawaii (Public Improvement, Series of 1912-13), dated September 3, 1912, due September 3, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 976, 977, 978, 979, and 980.

All of said bonds either matured or were redeemed and the principal amounts thereof were paid to said Treasurer of the United States subsequent to December 16, 1934, and were by him credited to the Board of Trustees of the Postal Savings System and the proceeds of said bonds have not been paid to the plaintiff, or any of his predecessors, as receiver of said Woodlawn Trust and Savings Bank.

7. After the closing of the bank of said Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, the Treasurer of the United States received \$90,657.96 for and on account of interest on the said bonds pledged as aforesaid, which said amount has by him been credited to the Board of Trustees of the Postal Savings System and no part of said sum has been paid to or received by the plaintiff, or any of his predecessors, as receiver of said Woodlawn Trust and Savings Bank.

8. At the time that the said Woodlawn Trust and Savings Bank was closed, on June 22, 1932, the deposit of postal savings funds to the credit of the Board of Trustees of the Postal Savings System in said Woodlawn Trust and Savings Banks, together with interest thereon, amounted to \$454,793.04, no part of which has been repaid.

43 9. Under the regulations prescribed by the Board of Trustees of the Postal Savings System, the Third Assistant Postmaster General is constituted the agent of the Board of Trustees, and in fact acts as such agent, for all purposes connected with the qualifications of depository banks, the fixing of the amounts of securities to be deposited and withdrawn by such banks and the conditions of such deposits and withdrawals, the deposit of postal savings funds

to the credit of said board and the withdrawal and transfer of such funds, the authorization of the sale of securities of banks which fail or decline to repay deposits on demand, the purchase of postal savings bonds, for depositors and the repurchase of such bonds for the purpose of maintaining their parity. The duties delegated to the Third Assistant Postmaster General, as such agent, by said regulations are performed in the Bureau of the Third Assistant Postmaster General, which has charge of all the fiscal duties of the Post Office Department, such as the money-order business, stamp sales, postal savings and anything relating to the postal revenues. The funds of the Postal Savings System are received by postmasters from depositors and are given the same protection and handling as money-order or stamp funds except that all postal savings funds are required by law to be deposited by postmasters in banks which have qualified by depositing collateral with the Treasurer of the United States, or to be remitted to the Central depository post office in the state. Surplus funds, meaning the difference between the earnings of funds taken in from depositors and the interest paid depositors, become a part of the revenues of the Post Office Department, which are used to pay the expenses of the Post Office Department. Earnings from the money-order service likewise constitute a postal revenue. Any amounts additional to the revenues of the Post

44 Office Department required to pay expenses of the Post Office Department are paid out of funds in the Treasury of the United States. Postal savings receipts are not available to meet the expenses of the local post office, as are other postal funds, until they reach the Treasury Department. The banks pay $2\frac{1}{2}$ per cent on postal savings deposits and postal savings depositors are paid 2 per cent. About 88 or 90 per cent of postal savings funds are now invested in Government securities which net a little better than $2\frac{1}{2}$ per cent. The difference between the interest received upon deposits or from investments and the interest paid depositors constitutes profit which is turned over as postal revenues and is available for the expenses of the Post Office Department.

10. The receipts given by the Treasurer of the United States for the securities deposited with him by the said Woodlawn Trust and Savings Bank and which are the securities claimed by plaintiff herein, state that the security or securities specified in the receipt are received by the Treasurer of the United States in trust for the Woodlawn Trust and Savings Bank and "are held by the Treasurer of the United States as security for the safekeeping and prompt payment by that bank of all postal savings funds that have been or may be deposited with it, and for the faithful performance of its duties as a postal savings depository of the United States."

11. Employees in the Postal Savings System are appointed by the Postmaster General and are paid out of the appropriations made by Congress. The Third Assistant Postmaster General gets a lump sum appropriation for all of his activities, but no specific appropriation for the Postal Savings Department or any other Department. Employees of local post-offices throughout the United States which are designated as depositories for postal savings funds are paid

45 out of the general revenues of the Post Office Department and not specially for the work done in the Postal Savings System—a clerk may be a postal savings clerk one hour and a post office clerk

the next. The bonded employees who have the Postal Savings work are bonded exactly the same, and the same bond cover all their activities, whether money-order or stamp funds, and the bonds run to the United States.

12. The Postmaster General makes two reports to Congress—one special report of the activities of the Postal Savings System in behalf of the Trustees, and one departmental report. The data is compiled largely in the Bureau of Accounts of the Post Office Department, except that part with respect to postal savings, which is prepared in the Division of Postal Savings and is combined with the Bureau of Accounts.

13. The Solicitor of the Post Office Department passes upon the legal acceptability of securities relating to the Postal Savings System. All question of law relating to the Postal Savings System are referred first to him.

14. On its application, the said Woodlawn Trust and Savings Bank was admitted on January 6, 1920, to membership in and became a member of the Federal Reserve System. It continued as such member until it suspended on June 22, 1932, when the Auditor of Public Accounts of the State of Illinois took control of its affairs. The federal reserve stock owned by the said bank was cancelled August 12, 1932.

15. After the closing of the said bank and up to the end of the year 1933 correspondence passed between H. C. Vernon, then Receiver of the Woodlawn Trust and Savings Bank, and his attorneys, and the Director of the Postal Savings System regarding the sale of the pledged securities for the purpose of liquidating the claim arising out

of the deposit of postal savings funds, but said Director refused to accept or to act upon the suggestion or request made by said H. C. Vernon, as Receiver of the Woodlawn Trust and Savings Bank, or by his attorneys, that said pledged securities be sold and the proceeds applied or credited upon the claim of the Trustees of the Postal Savings System against the Woodlawn Trust and Savings Bank or against said receiver based upon the deposit of postal savings funds in said bank.

16. In a letter dated May 3, 1932, the then Auditor of Public Accounts of the State of Illinois informed the Board of Trustees of the Postal Savings System of correspondence received by him from Receivers of State Banks in Illinois in regard to deposits of Postal Savings money wherein the collateral would not sell for enough to pay the deposits in full. He stated to the Board of Trustees "Under the laws of Illinois, you, of course, are entitled to convert the collateral into cash and apply the same on your claim * * *."

17. After the closing of the Woodlawn Trust and Savings Bank correspondence passed between H. C. Vernon, then Receiver of the Woodlawn Trust and Savings Bank, and the Director of the Postal Savings System, in which, under dates of August 8, 1932, September 24, 1932, and February 2, 1933, the said H. C. Vernon suggested and urged that the securities held by the Treasurer of the United States to secure the deposits of postal savings funds in the bank be sold and the proceeds be applied to reduce or liquidate the claim of the Trustees against the bank for the postal savings deposits, but the Trustees of the Postal Savings System in each instance refused to consent to the sale of said securities.

18. From reports of examination of the said Woodlawn Trust and Savings Bank made by bank examiners of the office of the Auditor of Public Accounts of the State of Illinois, the said Auditor was on notice and had knowledge that the said Woodlawn Trust and Savings Bank was receiving and had on deposit in its bank 47 Postal Savings funds during the period from 1912 to 1932, and that said bank had assets pledged to secure the repayment of such funds during the period from 1919 to 1932.

19. The Auditor of Public Accounts of the State of Illinois made biennial reports to the Governor and General Assembly of the State. In the report of 1911, there appears on page 304 thereof under the caption, "Aggregate resources and liabilities of all the state banks in Illinois, December 6, 1911, showing increase or decrease as compared with September 2, 1911, the date of the last statement issued by this department," the following item:

"December 6, 1911. Postal Savings Funds, \$7,189.10."

and on page 305, under the caption, "Aggregate resources and liabilities of all the state banks in Chicago, December 6, 1911, showing increase or decrease as compared with September 2, 1911, the date of the last statement issued by this department," the following item:

"December 6, 1911. Postal Savings Funds, \$5,134.00."

20. In subsequent reports up to December 1933, no specific reference to postal savings deposits appears, such deposits being included in an item designated "Other time deposits." Since December 1933, the reports show the par value of the securities pledged to insure postal savings funds.

21. The following solvent state banks in Illinois, on September 30, 1937, had securities pledged to secure deposits of postal savings funds:

48	"Name of bank	Location	Security value of pledged collateral
	Belleville Bank & Trust Co.....	Belleville, Ill.....	\$7,000
	State Bank of Cherry.....	Cherry, Ill.....	25,970
	Banco Di Napoli Trust Co. of Chicago.....	Chicago, Ill.....	45,000
	State Bank of Collinsville.....	Collinsville, Ill.....	5,100
	State Bank of East Moline.....	East Moline, Ill.....	10,000
	Effingham State Bank.....	Effingham, Ill.....	5,000
	Bank of Evansville.....	Evansville, Ill.....	49,570
	Fairbury State Bank.....	Fairbury, Ill.....	5,000
	State Bank of Geneva.....	Geneva, Ill.....	30,000
	Peoples State Bank.....	Gillespie, Ill.....	10,400
	Montgomery County Loan & Trust Co.....	Hillsboro, Ill.....	101,500
	Farmers State Bank & Trust Co.....	Jacksonville, Ill.....	5,000
	Framers & Miners Bank.....	Ladd, Ill.....	13,690
	Farmers State Bank of Lawrenceville.....	Lawrenceville, Ill.....	25,000
	Monmouth Trust & Savings Bank.....	Monmouth, Ill.....	80,000
	State Bank of Niantic.....	Niantic, Ill.....	12,000
	Jefferson Tr. & Savings Bank of Peoria.....	Peoria, Ill.....	21,200
	First State Bank of Red Bud.....	Red Bud, Ill.....	5,000
	Red Bud Trust Co.....	Red Bud, Ill.....	28,300
	Rock City Bank.....	Rock City, Ill.....	10,000
	State Bank of St. Charles.....	St. Charles, Ill.....	33,000
	First Tr. & Savings Bank of Watseka.....	Watsseka, Ill.....	20,000
	First State Bank of Wenona.....	Wenona, Ill.....	5,000
	Western Springs State Bank.....	Western Springs, Ill.....	10,000 "

On September 30, 1937, there were approximately 500 solvent State banks operating in the State of Illinois.

49 22. In statements printed by the said Woodlawn Bank on cards called statement of the bank's condition, on which appeared copies of the statements made by the said bank to the State Auditor of Public Accounts pursuant to the quarterly bank call of the said auditor, there was also printed:

“Depository for the City of Chicago, the County of Cook, the State of Illinois, the U. S. Postal Savings Fund.”

“Under United States Government supervision.”

These cards bear dates December 31, 1921; April 3, 1923; September 14, 1923; March 31, 1924; October 10, 1924; October 10, 1924.

A like card of date May 12, 1919, has the following:

“Depository for United States Postal Savings System, United States Liberty Loan Fund, County of Cook, City of Chicago.”

23. There is no evidence that any suggestion was made to the defendants, or to any of them, of the lack of power in the Woodlawn Trust and Savings Bank to pledge its assets to secure Postal Savings funds until the letter of counsel for the receiver dated March 13, 1935, was sent to the Board of Trustees, Postal Savings System.

24. The Woodlawn Trust and Savings Bank, during its pending receivership, has paid two dividends to general creditors; one of 15 per cent in March 1935 and the other of 15 per cent in June 1937.

Conclusions of law

50 1. The Court has jurisdiction of the subject matter of this suit and of the parties hereto.

2. The equities of this cause are with the plaintiff.

3. This is not a suit against the United States.

4. The United States is not a necessary or indispensable party to this suit.

5. The Woodlawn Trust and Savings Bank had no power or authority, under the laws of the State of Illinois, to pledge any of its assets to secure deposits of Postal Savings funds, and the purported pledging of part of its assets, consisting of bonds, by said Woodlawn Trust and Savings Bank with the Treasurer of the United States to secure deposits of Postal Savings funds was ultra vires, illegal, and void and contrary to the public policy of the State of Illinois.

6. The plaintiff is entitled to recover and to have turned over and delivered to him by the defendant William A. Julian, as Treasurer of the United States, for the use and benefit of the depositors and creditors of said Woodlawn Trust and Savings Bank, all bonds now held by the defendant William A. Julian, as Treasurer of the United States, or under his control, which were delivered to said William A. Julian as such Treasurer, or to any of his subordinates, or to any of his predecessors in office or their subordinates, by said Woodlawn Trust and Savings Bank to secure deposits of Postal Savings funds in the bank formerly operated by said Woodlawn Trust and Savings Bank, and plaintiff is not required to pay the Trustees of the Postal Savings System, or the said William A. Julian, as Treasurer of the United States, or as Treasurer of the Board of Trustees of the Postal Savings System, the amount of said deposits, or any part thereof, in order to recover, and to have turned over and delivered to him by the defendant William A. Julian, as Treasurer of the United States,

the said bonds now held by the defendant William A. Julian
 51 as Treasurer of the United States.

7. The defendants, James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, as Trustees of the Postal Savings System, have not, nor has the defendant William A. Julian, as Treasurer of the Board of Trustees of the Postal Savings System, any valid or legal interest in or claim to any of the bonds now held by the defendant William A. Julian, as Treasurer of the United States, which were delivered to said William A. Julian, as such Treasurer, or to any of his predecessors in office, by said Woodlawn Trust and Savings Bank to secure deposits of Postal Savings funds in the bank formerly operated by said Woodlawn Trust and Savings Bank.

8. The plaintiff is entitled to recover and receive from the Board of Trustees of the Postal Savings System all sums of money received after the closing of the Woodlawn Trust and Savings Bank by the Treasurer of the United States and by him credited to the Board of Trustees of the Postal Savings System for or on account of the principal of or interest on the bonds which were turned over and delivered by Woodlawn Trust and Savings Bank to the Treasurer of the United States to secure the repayment of deposits of Postal Savings funds in said bank.

9. The action of the Woodlawn Trust and Savings Bank in becoming a member of the Federal Reserve System on January 6, 1920, and continuing as such until the closing of said bank on June 22, 1932, by the Auditor of Public Accounts of the State of Illinois, did not enlarge the powers of said Woodlawn Trust and Savings Bank nor authorize it to pledge any of its assets to secure deposits of Postal Savings funds.

10. The action of a former receiver of the Woodlawn Trust & Savings Bank and the then Auditor of Public Accounts of the State of Illinois in suggesting or urging the sale of assets pledged to
 52 secure the deposits of Postal Savings funds and the application of the proceeds of sale upon the claim of the Trustees of the Postal Savings System against said bank for deposits of postal savings funds, does not constitute any estoppel against the plaintiff in this suit nor any defense to this suit.

11. The fact that the Auditor of Public Accounts of the State of Illinois had knowledge that the Woodlawn Trust and Savings Bank was receiving deposits of Postal Savings funds during the period from 1912 to 1932 and had pledged assets to secure the repayment of such deposits during the period from 1919 to 1932, does not constitute any defense to this suit.

12. The fact that in a report made for the year 1911 by the Auditor of Public Accounts of the State of Illinois to the Governor and General Assembly of that State appeared certain items showing the deposit of Postal Savings funds in Illinois State banks, and that since 1933 reports made by said Auditor of Public Accounts to the Governor and General Assembly of Illinois show the par value of the securities pledged to secure Postal Savings funds does not constitute any defense to this suit.

13. The fact that twenty-four out of approximately five hundred State banks in the State of Illinois, on September 30, 1937, had

securities pledged to secure deposits of Postal Savings funds does not constitute any defense to this suit.

14. The fact that the Woodlawn Trust and Savings Bank circulated cards or statements showing that it was depository for Postal Savings funds does not constitute any defense to this suit.

ALFRED A. WHEAT,
Chief Justice.

APRIL 14, 1938.

53

Decree

Filed Apr. 14, 1938

This cause came on to be further heard at this term; and thereupon, upon consideration thereof, it is this 14th day of April 1938 adjudged, ordered, and decreed as follows, viz:

1. That the pledging of a portion of the assets of Woodlawn Trust and Savings Bank, consisting of bonds hereinafter particularly described, with the Treasurer of the United States to secure deposits of Postal Savings funds in the bank formerly operated by said Woodlawn Trust and Savings Bank was ultra vires and void, and plaintiff as receiver of said Woodlawn Trust and Savings Bank is entitled to the possession of all of said bonds now held by the defendant William A. Julian as Treasurer of the United States, and that the claims of all of the defendants to this suit, and each of them, to said bonds, are null and void as against the plaintiff.

2. That the defendant William A. Julian, as Treasurer of the United States, be, and he hereby is, ordered and directed to turn over and deliver to Charles H. Albers, as receiver of Woodlawn Trust and Savings Bank within twenty (20) days from the entry of this decree, the following described bonds with all interest coupons attached thereto or pertaining thereto maturing after this date,

54 which were turned over and delivered by said Woodlawn Trust and Savings Bank to, and pledged with, him or any of his predecessors in office to secure the deposit of Postal Savings funds to the credit of the Trustees of the Postal Savings System in the bank formerly operated by said Woodlawn Trust and Savings Bank, to wit:

Fifty-eight (58) 3% United States Treasury Bonds, dated September 15, 1931, redeemable September 15, 1951, due September 15, 1955, in the aggregate principal amount of \$267,500, the said bonds being numbered, respectively, 248, 282, 283, 284, 285, 6600, 6601, 6604, 6605, 6607, 6609, 6611, 6613, 6614, 14419, 14420, 14476, 15367, 15368, 15369, 15370, 19939, 19957, 19959, 20215, 23290, 23580, 23682, 24004, 24043, 24044, 24048, 24049, 47895, 47896, 47897, 47898, 47899, 47900, 47901, 51866, 51867, 51868, 51869, 51870, 72300, 72301, 72302, 72303, 72304, 72305, 72306, 72307, 74545, 74546, 74547, 74548, and 74549.

Seven (7) 3½% United States Coupon Treasury Bonds, dated June 15, 1927, redeemable June 15, 1943, due June 15, 1947, in the aggregate principal amount of \$7,000, the said bonds being numbered, respectively, 00052703, 00052704, 00052705, 00052706, 00052707, 00052708, and 00052709.

Ten (10) 4½% Coupon Bonds of the State of Alabama (Series "C" Public Road, Highway & Bridge Bonds) dated December 1, 1923, due December 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 9344, 9345, 9346, 9347, 9348, 9349, 9350, 9351, 9352, and 9353.

Ten (10) 4¾% Coupon Bonds of the State of Arkansas (State Toll Bridge Bonds) dated November 1, 1930, due November 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 382, 385, 386, 387, 404, 405, 406, 407, 408, and 409.

Ten (10) 4¼% Coupon Bonds of the State of California (Veterans' Welfare Bond Act of 1929) dated February 1, 1931, due February 1, 1941, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, and 1169.

Ten (10) 4% Coupon Bonds of the City of Chicago, Illinois (Revolving Fund Bonds), dated August 1, 1930, due January 1, 1936, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4028, 4029, and 4030.

Ten (10) 5% Bonds of School District Number 89 (Maywood), Cook County, Illinois (School Building Bonds), dated December 31, 1930, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 41, 42, 43, 44, 45, 51, 52, 53, 54, and 55, said bonds numbered 41 to 45, both inclusive, being due January 1, 1943, and bonds numbered 51 to 55, both inclusive, being due January 1, 1944.

55 Ten (10) 4% Federal Farm Loan 4% Coupon Bonds of the Federal Land Bank of Houston, Texas, dated May 1, 1928, redeemable May 1, 1938, due May 1, 1958, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, M381080, M381081, M381082, M381083, M381084, M381085, M381086, M381087, M381088, and M381089.

Ten (10) 4¾% Coupon Bonds of the State of Illinois (Service Compensation Bonds, Series B), dated October 1, 1923, due August 1, 1942, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 13113, 13114, 13115, 13116, 13117, 13118, 13119, 13120, 13121, and 13122.

Ten (10) 5½% Coupon Bonds of the County of Lenoir, North Carolina (Road and Bridge Funding Bonds), dated April 1, 1919, in the aggregate principal amount of \$10,000, said bonds numbered 87, 88, 89, 90, 91, and 92 for \$1,000 each due April 1, 1938, and said bonds numbered 97, 98, 99, and 100 for \$1,000 each, due April 1, 1939.

Fifteen (15) 5% Coupon Bonds of the Board of Commissioners of the Port of New Orleans, Louisiana (Port Commission Serial Canal Gold Bonds), dated July 1, 1918, due July 1, 1957, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, A-3177, A-3178, A-3179, A-3180, A-3181, A-3182, A-3183, A-3184, A-3185, A-3186, A-3187, A-3188, A-3189, A-3190, and A-3191.

Ten (10) 4½% Coupon Bonds of the State of Louisiana (Highway Bonds, Series E), dated May 1, 1931, due May 1, 1943, in the

aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, and 2820.

Eight (8) 4½% Coupon Bonds of Montgomery County, Ohio (Edison Avenue Improvement Bonds), dated April 1, 1930, due October 1, 1936, in the aggregate principal amount of \$8,000, the said bonds being numbered, respectively, 43, 44, 45, 46, 47, 48, 49, and 50.

Ten (10) 5% Coupon Bonds of the Proviso Township High School District No. 209, Illinois (School Building Bonds), dated July 1, 1929, due July 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

Fifteen (15) 4% Bonds of the City of Seattle, Washington (Seattle Bridge Bonds, Series G-2, 1931), dated September 1, 1931, due September 1, 1959, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, and 436.

56 Ten (10) 4¾% Coupon Bonds of the State of South Carolina (State Highway Certificate of Indebtedness), dated December 1, 1930, due December 1, 1949, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 16367, 16368, 16369, 16370, 16371, 16596, 16597, 16598, 16599, and 16600.

Five (5) 4% Bonds of the City of Toledo, Ohio (Grade Elimination Bonds, Fourth Series), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 74, 75, 76, 77, and 78.

Five (5) 4% Bonds of the City of Toledo, Ohio (University Farm Building Refunding Bonds), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 42, 43, 44, 45, and 46.

Ten (10) 5½% Bonds of the City of Tulsa, Oklahoma (Sewer Mains and Sub-Main Bonds), dated July 1, 1921, due July 1, 1946, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 276, 282, 283, 284, 285, 286, 287, 288, 289, and 290.

Five (5) 4% Coupon Bonds of the City of Waterloo, Iowa (Eighteenth Street Bridge Bonds), dated July 1, 1931, due July 1, 1939, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 34, 35, 36, 37, and 38.

Five (5) 5% Coupon Bonds of the County of Wayne, North Carolina (School Funding Bonds), dated July 1, 1931, due July 1, 1936, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 16, 17, 18, 19, and 20.

Five (5) 4½% Coupon Bonds of the City of West Allis, Wisconsin (Storm Sewer Bonds for the year 1931), dated March 1, 1931, due March 1, 1944, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 13, 14, 15, 16, and 17.

3. That the defendants, James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, as Trustees of the Postal Savings System, be, and they hereby are, ordered and directed to pay, or cause to be paid, to the plaintiff out of Postal Savings funds in their pos-

session or under their control, within twenty (20) days from the entry of this decree, the sum of \$106,657.96 on account of moneys received by the said Trustees of the Postal Savings System or credited to their account by the Treasurer of the United States since June 22, 1932, and any additional moneys which have since April 6, 1938, been received or which may hereafter be received

57 by or credited to the account of said Trustees, for or on account of the principal of and interest on bonds pledged by said Woodlawn Trust and Savings Bank with the Treasurer of the United States to secure the deposit of Postal Savings funds in the bank formerly operated by said Woodlawn Trust and Savings Bank; provided that simultaneously with such payment, the plaintiff herein, or his successor or successors in office as such Receiver, shall pay to the Trustees of the Postal Savings System, the amount of such dividends as have accrued or may accrue to and be payable by the said plaintiff or his successor or successors in office to said Trustees as general creditors of the said Woodlawn Trust and Savings Bank.

4. That this decree shall inure to the benefit of any successor of the said Charles H. Albers as receiver of said Woodlawn Trust and Savings Bank, and shall extend to and be binding upon any successor of the said William A. Julian as Treasurer of the United States and any successor of the said James A. Farley, Henry Morgenthau, Jr., or Homer S. Cummings as a trustee of the Postal Savings System.

ALFRED A. WHEAT,
Chief Justice.

From the foregoing order and decree the defendants, in open Court, note an appeal to the United States Court of Appeals for the District of Columbia, and said appeal is hereby allowed.

ALFRED A. WHEAT,
Chief Justice.

58

Assignment of errors

Filed April 25, 1938

* * * * *

1. The Court erred in finding and determining that the Woodlawn Trust and Savings Bank was without authority or power to pledge its assets to secure deposits of postal savings funds in its bank.

2. The Court erred in finding and determining that the Woodlawn Trust and Savings Bank by becoming a member of the Federal Reserve system did not thereby become an instrumentality of the United States and empowered and authorized to pledge its assets to secure deposits of postal savings funds in its bank.

3. The Court erred in not holding and determining that because of its membership in the Federal Reserve system the Woodlawn Trust and Savings Bank was empowered and authorized to pledge its assets to secure deposits of postal savings funds in its bank inasmuch as the Trustees of the Postal Savings System were by statute expressly required to exact security for such deposits.

4. The Court erred in holding and determining that the suit was not one against the United States.

5. The Court erred in holding and determining that the United States was not a necessary and indispensable party to this suit.

6. The Court erred in overruling the motion to dismiss the bill of complaint and in not granting the same.

7. The Court erred in not holding and determining that the Woodlawn Trust and Savings Bank was warranted in pledging its assets to secure deposits of postal savings funds because of the long existing custom and practice of state banks in Illinois, to do so, said practice and custom being well known to and acquiesced in by the Auditor of Public Accounts of the said State.

8. The Court having held and determined that the Woodlawn Trust and Savings Bank was not authorized to pledge the collateral required by the Federal law for deposits of Postal Savings Funds, it erred in not holding and determining that the said bank in accepting such deposits held them in trust for the defendants as a trustee ex maleficio, and that the defendants as trustees of the Postal Savings System were entitled to a preference as creditors of said bank and to a lien on the collateral decreed to be returned.

DAVID A. PINE,
United States Attorney.

H. L. UNDERWOOD,
Assistant United States Attorney.

LESLIE C. GARNETT,
Special Assistant to the Attorney General,
Attorneys for defendants (Appellants).

Service of a copy of the foregoing is hereby acknowledged this 25th day of April 1938.

LLEWELLYN A. LUCE,
HOMER D. DINES, L. A. L.,
Attorneys for Plaintiff.

60 District Court of the United States for the District of
Columbia

Tuesday, June 21, 1938

The Court resumes its sessions pursuant to adjournments, the Justices sitting in Equity, presiding.

* * * * *

Come now the parties hereto by their respective attorneys of record, and thereupon, the defendants by their attorneys present to the Court their Statement of Evidence taken at the trial of the cause and prays that the same be signed and made of record, nunc pro tunc, which is hereby accordingly done.

ALFRED A. WHEAT,
Chief Justice.

61 In the District Court of the United States for the District of
Columbia

Holding an Equity Court

No. 59,876. In Equity

CHARLES H. ALBERS, AS RECEIVER OF WOODLAWN TRUST AND SAVINGS,
BANK, PLAINTIFF

vs.

JAMES A. FARLEY, ET AL., DEFENDANTS

Designation of record

Filed April 25, 1938

* * * * *

The Clerk will please prepare the record on appeal herein, including therein the following:

1. Bill of Complaint omitting therefrom the exhibits.
2. Motion to Dismiss Bill of Complaint.
3. Order Denying Motion to Dismiss.
4. Answer of defendants omitting exhibit.
5. Order substituting Charles H. Albers, Receiver, as Plaintiff in lieu of William L. O'Connell, deceased.
6. Findings of fact and conclusions of law.
7. Decree.
8. Notations of appeal in open court.
9. Statement of the evidence.
10. Assignment of Errors.
11. This Designation.

DAVID A. PINE,
United States Attorney,
H. L. UNDERWOOD,

Assistant United States Attorney,
LESLIE C. GARNETT,

Special Assistant to the Attorney General,
Attorneys for defendants (appellants).

Service of a copy of the foregoing is hereby acknowledged this
25th day of April 1938.

LEWELLYN A. LUCE,
HOMER D. DINES, L. A. L.,
Attorneys for Plaintiff.

62 District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 61, both inclusive, to be a true and correct

transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 59876 in Equity, wherein William L. O'Connell, as Receiver of Woodlawn Trust and Savings Bank, a corporation, is Plaintiff and James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, as Trustees of Postal Savings System, et al., are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of July 1938.

[SEAL]

C. E. STEWART, *Clerk*.

[Endorsement on cover:] No. 7211. James A. Farley et al., Appellants, vs. Charles H. Albers as Receiver &c. United States Court of Appeals for the District of Columbia. Filed July 15, 1938. Joseph W. Stewart, Clerk.

Addition to Record per Stipulation of Counsel

**UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA**

APRIL TERM, 1938

No. 7211

**JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND
HOMER S. CUMMINGS AS TRUSTEES OF THE POSTAL
SAVINGS SYSTEM; WILLIAM A. JULIAN AS TREAS-
URER OF THE UNITED STATES OF AMERICA AND WIL-
LIAM A. JULIAN AS TREASURER OF THE BOARD OF
TRUSTEES OF THE POSTAL SAVINGS SYSTEM, APPEL-
LANTS**

vs.

**CHARLES H. ALBERS AS RECEIVER OF WOODLAWN
TRUST AND SAVINGS BANK, A CORPORATION**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA**

FILED JULY 15, 1938

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

APRIL TERM, 1938

No. 7211

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND
HOMER S. CUMMINGS AS TRUSTEES OF THE POSTAL
SAVINGS SYSTEM; WILLIAM A. JULIAN AS TREAS-
URER OF THE UNITED STATES OF AMERICA AND WIL-
LIAM A. JULIAN AS TREASURER OF THE BOARD OF
TRUSTEES OF THE POSTAL SAVINGS SYSTEM, APPEL-
LANTS

vs.

CHARLES H. ALBERS AS RECEIVER OF WOODLAWN
TRUST AND SAVINGS BANK, A CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

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A *Addition to record per stipulation of counsel*

In the United States Court of Appeals for the District of Columbia

April Term, 1938

No. 7211

JAMES A. FARLEY, ET AL., APPELLANTS

vs.

CHARLES H. ALBERS, RECEIVER, ETC., APPELLEE

STIPULATION

It is stipulated by and between the respective parties hereto, acting by their attorneys, that, subject to the approval of the Court, the statement of evidence, specified in the Designation of Record as a part of and to be included in the record on appeal to this Court, and which was duly prepared, settled, and lodged with the Clerk of the District Court and included in the record on appeal, but which was inadvertently omitted when the other parts of the record were delivered to the Clerk of this Court and filed therein, may be now received and filed as a part of the said record and be printed and taken and considered as a part of said record.

DAVID A. PINE,

United States Attorney.

LESLIE C. GARNETT,

Special Assistant to the Attorney General.

H. L. UNDERWOOD,

*Assistant United States Attorney,**Attorneys for Appellants.*

LLEWELLYN A. LUCE,

Attorney for Appellee.

No. 7211. James A. Farley et al., Appellants, vs. Charles H. Albers, Receiver, etc., Appellee. Stipulation. United States Court of Appeals for the District of Columbia. Filed Aug. 12, 1938. Joseph W. Stewart, Clerk. David A. Pine, United States Attorney. Leslie C. Garnett, Special Assistant to Attorney General. H. D. Underwood, Assistant United States Attorney.

C

In the District Court of the United States for the District of Columbia

Equity No. 59876

CHARLES R. ALBERS, AS RECEIVER OF WOODLAWN TRUST AND SAVINGS
BANK, PLAINTIFF

vs.

JAMES A. FARLEY ET AL., DEFENDANTS

United States Court of Appeals for the District of Columbia. Filed Aug. 12, 1938. Joseph W. Stewart, Clerk.

To LLEWELLYN A. LUCE, *Esquire*,
Attorney for Plaintiff.

Please take notice that the within Statement of Evidence will be called to the attention of and submitted to the court on June 21, 1938, at 10 o'clock A. M., or as soon as counsel can be heard, for the purpose of having the same signed and sealed by the court.

DAVID A. PINE,
United States Attorney,
 LESLIE C. GARNETT,
Special Assistant to the Attorney General,
 HARRY L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for Defendants.

Service of the foregoing notice and of a copy of the said Statement of Evidence is hereby acknowledged this 24th day of May 1938.

LLEWELLYN A. LUCE,
 COOKE, SULLIVAN & RICKS,
Attorneys for Plaintiff.

1 In the District Court of the United States for the District of
 Columbia

Equity No. 59876

CHARLES R. ALBERS, AS RECEIVER OF WOODLAWN TRUST AND SAVINGS
 BANK, PLAINTIFF

vs.

JAMES A. FARLEY, ET AL., DEFENDANTS

Statements of evidence

At the hearing of the above-entitled cause before the Honorable Mr. Chief Justice Wheat, March 30, 1938, the following proceedings were had, evidence offered and given, rulings made by the Court, and exceptions taken and noted by the Court.

Thereupon, to maintain the issues on his part, plaintiff offered in evidence a "Stipulation of Facts" agreed to by the respective parties, which stipulation was received and marked "Joint Exhibit No. 1" and is in words and figures, as follows:

2 *Stipulation of facts*

The parties hereto agree that for the purpose of the trial and final hearing of this case, the following facts are true:

1. William L. O'Connell, the original plaintiff herein, was, at the time of the commencement of this suit, Receiver of Woodlawn Trust and Savings Bank, a corporation, by virtue of his appointment as such Receiver by the Auditor of Public Accounts of the State of Illinois pursuant to the statutes of the State of Illinois, as hereinafter more fully and particularly shown. The said William L. O'Connell died July 24, 1936, and on the same day Charles H. Albers was duly

designated and appointed Receiver of said Woodlawn Trust and Savings Bank by Edward J. Barrett, an Auditor of Public Accounts of the State of Illinois, to succeed William L. O'Connell, deceased, and thereupon, on said day, the said Charles H. Albers duly qualified as such receiver. By order entered in this cause on January 23, 1937,

the said Charles H. Albers, as Receiver of Woodlawn Trust and Savings Bank, was substituted as party plaintiff in this cause.

2. James A. Farley is the Postmaster General of the United States, Henry Morgenthau, Jr., is the Secretary of the Treasury of the United States, and Homer S. Cummings is the Attorney General of the United States, and the said James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings are, ex-officio, the persons constituting the Board of Trustees of the Postal Savings System, created by the Act of Congress entitled "An Act to establish postal savings depositories for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes," approved June 25, 1910. The defendant William A. Julian is Treasurer of the United States of America and as such is, by virtue of the Act of Congress above referred to, ex-officio Treasurer of the Board of Trustees of the Postal Savings System.

3. The original plaintiff, William L. O'Connell, was at the time of the commencement of this suit, a citizen of the United States and a resident of the City of Chicago, in the State of Illinois; the said Charles H. Albers was, at the time of his appointment as such receiver and still is, a citizen of the United States and a resident of said City of Chicago; and each of said defendants was, at the time of the commencement of this suit and still is, a citizen of the United States and has his official residence in the City of Washington, in the District of Columbia.

4. The Woodlawn Trust and Savings Bank was duly organized as a corporation on April 27, 1905, under and by virtue of an Act of the General Assembly of the State of Illinois entitled "An Act concerning corporations with banking powers," as amended.

5. By section 5 of Article XI of the Constitution of the State of Illinois, in force August 8, 1870, and ever since up to the present time, it was and is provided as follows:

"No act of the general assembly authorizing or creating corporations or associations with banking powers, whether of issue, deposit or discount, nor amendments thereto, shall go into effect or in any manner be in force unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all the votes cast at such election for or against such law."

6. From and after its organization as a corporation on April 27, 1905, up to and until June 22, 1932, the said Woodlawn Trust and Savings Bank operated a State bank in the City of Chicago, in Cook County, Illinois, under and pursuant to the authority conferred upon it by the Acts of the General Assembly of the State of Illinois entitled "An Act concerning corporations with banking powers," and "An Act to revise the law with relation to banks and banking," as approved and subsequently amended. On or about June 22, 1932, the Auditor of Public Accounts of the State of Illinois found that the capital stock of said Woodlawn Trust and Savings Bank had

become impaired and that the condition of said bank was such that said impairment could not be made good, and thereupon took control of the property, assets, and effects of said bank and prohibited the carrying on by it of any banking business, and thereafter, on July 1, 1932, appointed one H. C. Vernon to act as Receiver of the assets, property, and effects of said Woodlawn Trust and Savings Bank under and by virtue of the laws of the State of Illinois.

5 An order or decree was entered by the Circuit Court of Cook County, Illinois, on November 9, 1932, in a certain suit then and still pending in said court entitled "People of the State of Illinois ex rel. Oscar Nelson, as Auditor of Public Accounts of the State of Illinois vs. Woodlawn Trust and Savings Bank, a corporation," Number B-244876, which order or decree was as follows:

6 STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County

In Chancery No. B-244876

PEOPLE OF THE STATE OF ILLINOIS EX REL. OSCAR NELSON, AS AUDITOR
OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS, COMPLAINANT

vs.

WOODLAWN TRUST AND SAVINGS BANK, A CORPORATION, DEFENDANT

Decree on bill for dissolution

Now on this 9th day of November 1932, this cause came on to be heard upon the Bill of Complaint filed herein, no appearance, plea, demurrer or answer having been filed by the defendant in this cause, and the Court after examining the files and being fully advised in the premises, finds that the Bill of Complaint in this cause was filed in this Court on the 19th day of July 1932; that summons was duly issued and was on the 23rd day of July 1932 served upon H. M. Cooling, Assistant Cashier and Agent of the Woodlawn Trust and Savings Bank, the defendant in this cause, by the Sheriff of Cook County, Illinois, and that said defendant, the Woodlawn Trust and Savings Bank, a corporation, is now in default and it is ordered that said Bill of Complaint be taken as confessed by said defendant.

7 The Court further finds that the Woodlawn Trust and Savings Bank, prior to the date of its suspension, operated a State Bank in the City of Chicago, Illinois, and that its location prior to the date of its suspension and at the date of the filing of the Bill in this cause was at 1180 East 63rd Street in the City of Chicago, Illinois.

The Court therefore finds that it has jurisdiction of the subject matter of this cause and of the parties thereto.

Said cause thereupon coming on to be heard upon said Bill of Complaint taken as confessed by the defendant herein, and the Court, after hearing evidence in open court and being fully advised in the premises, finds that the Woodlawn Trust and Savings Bank is a cor-

poration duly organized and existing under and by virtue of an Act of the General Assembly of the State of Illinois entitled "An Act Concerning Corporations with Banking Powers," approved June 16, 1887, as subsequently amended, adopted, and ratified, as required by law and that said bank was incorporated on the 27th day of April, 1905, under the name of "Woodlawn Trust and Savings Bank", and that its last authorized place of business was at 1180 East 63rd Street in the City of Chicago, Illinois, and that said bank was organized for the purpose of discount and deposit, buying and selling exchange, and doing a general banking business.

The Court further finds that the capital stock of said bank amounted to Six Thousand (6,000) shares of the par value of One Hundred Dollars (\$100.00) each, and that the total capital of said bank aggregated the sum of Six Hundred Thousand Dollars (\$600,000.00) and that said bank from the time of its incorporation to the 22nd day of June, 1932, exercised its charter powers by operating a banking institution at the location heretofore set forth.

The Court further finds that an examination of the Woodlawn Trust and Savings Bank was made by and under the authority of Oscar Nelson, as Auditor of Public Accounts of the State of Illinois, on the 22nd day of June, 1932, and that the condition of the books of said corporation with respect to its resources and liabilities was found to be as follows, to-wit:

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RESOURCES

Demand—Unsecured	\$26, 173. 85
Demand—Collateral	110, 211. 16
Time—Personal	90, 293. 60
Time—Collateral	423, 362. 58
Time—Collateral—Liberty Bonds	200. 00
Time—Collateral—Veterans' Compensation	4, 154. 58
Real Estate Mortgages Deposited with State Auditor	191, 400. 00
Real Estate Mortgages	714, 405. 00
Maturing Mortgage Bond Payments Accounts Receivable	161, 529. 23
Time Personal Commercial Paper	35, 218. 75
National Credit Corporation	9, 450. 00
Pro rata Liability on other banks borrowing through National Credit Corporation	7, 710. 16
Overdrafts	633. 10
Stocks	94, 676. 41
Bonds	1, 104, 671. 61
Bonds Purchased for sale	8, 960. 00
Bonds—Municipal	276, 797. 46
Bonds—Liberty	106, 415. 63
United States Treasury Notes	196, 901. 75
Internal Revenue Stamps	49. 30
Furniture and Fixtures	97, 574. 70
Real Estate	16, 916. 64
Customers' Liability on Letter of Credit	500. 00
Bank Building and Equipment	805, 622. 59
Mortgage Foreclosures	16, 848. 93
Bonds Sold on Partial Payment	1, 300. 00
Deferred Expense	7, 322. 61
Prepaid Interest	164. 66
Maturing Coupon Payments—Accounts Receivable	23, 194. 76
Cash Items	6, 515. 55
Cash	86, 553. 60
Federal Reserve Bank	28, 663. 46
Continental Illinois Bank & Trust Co	61, 062. 67
First National Bank, Chicago	367. 45

Bankers Trust Co., New York	\$8,733.21
Coupons in Transit	1,198.11
Collections in Transit	1.61
Clearings	35,193.41
Total Resources	4,760,948.22

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LIABILITIES

Capital Stock	\$600,000.00
Surplus	100,000.00
Undivided Profits	26,701.61
Contingent Reserve	34,622.11
Reserve for Depreciation—Bank Building and equipment	200,000.00
Reserve for Bond Depreciation	200,000.00
War Loan Deposit Account	25,000.00
Prepayments on Security Sales	55,766.82
Commercial Deposits	833,892.63
Commercial Deposits June 22, 1932	35,110.29
Demand Certificate of Deposit	725.00
Demand Certificate of Deposit, June 22, 1932	50.00
Mortgage Loan Payments	220.00
Maturing Coupon Payments—Accounts Payable	11,544.97
Maturing Mortgage Payments—Accounts Payable	1,600.00
Trust Department	95,450.35
Trust Department Checks	433.40
Certified Checks	4,534.80
Cashier's Checks	24,764.95
Cashier's Checks—Mortgage Loan Department	2,700.11
Expense Vouchers	74.19
Adrian State Savings Bank	3,634.42
Chatfield Trust & Savings Bank	4,889.29
Savings Deposits	1,228,044.08
Savings Deposits—June 22, 1932	771.49
Time Certificates of Deposit	77,790.36
Christmas Savings Club, 1931	124.07
Christmas Savings Club, 1932	13,730.72
Christmas Savings Club, 1932—June 22, 1932	26.70
Mortgage Loan Sinking Fund Payments—Trust Department	40,408.56
Mortgage Bond Club	664.00
Bankers Insured Savings	21,579.45
Postal Savings	449,889.95
Assured Investment Plan	65,478.42
Assured Investment Plan—June 22, 1932	53.30
Bills Payable	290,751.00
Rediscounts—Federal Reserve Bank, Chicago	61,711.00
Liability Under Letters of Credit	500.00
Mortgage Bonds Outstanding	240,000.00
Pro rata Liability on other banks borrowing through National Credit Corporation	7,710.16
Total Liabilities	4,760,948.22

11 The Court further finds that from the examination of said bank as made by the Auditor of Public Accounts of the State of Illinois, it was disclosed that the capital stock of said bank had become impaired and that the condition of said bank was such that said impairment could not be made good; that said bank was being conducted in an unsafe manner, and that it was improper and dangerous for said bank to continue to receive deposits and to further conduct a banking business; that said Auditor of Public Accounts of the State of Illinois thereupon took control of the property, assets and effects of said bank and prohibited the carrying on by it of any banking business, and that said bank has since said date ceased to

do the business for which it was incorporated, and is not now doing business.

The Court further finds that in order to protect the rights and interests of the depositors and creditors of said Woodlawn Trust and Savings Bank and to prevent waste and depreciation of the resources thereof, said Auditor of Public Accounts of the State of Illinois, pursuant to the authority vested in him by law, did on the 1st day of July, 1932, appoint H. C. Vernon, a reputable person of Chicago, Cook County, Illinois, the county in which said bank is located, to act as receiver of the assets, property and effects of said Woodlawn Trust and Savings Bank, upon the execution and filing by said H. C. Vernon with said Auditor of Public Accounts of the State of Illinois, of a surety bond in the sum of two hundred fifty thousand dollars (\$250,000.00) conditioned upon the faithful performance by him of

his duties as such Receiver; that said receiver has qualified for
12 his said office by filing his acceptance of such appointment with said Auditor of Public Accounts, and by filing with said Auditor of Public Accounts, his said bond in the sum aforesaid, which bond and the security thereon were thereupon approved by said Auditor of Public Accounts; that said receiver, having so qualified, did take possession of the assets, property and effects of said bank, and is now in possession and control thereof, and is administering the same under the direction of said Auditor of Public Accounts of the State of Illinois, and the court further finds that the appointment of the said H. C. Vernon, as receiver of the Woodlawn Trust and Savings Bank was duly confirmed by this Court on the 22nd day of July, 1932.

The Court further finds from the evidence introduced in this cause that on the 22nd day of June, 1932 the capital stock of the Woodlawn Trust and Savings Bank had become impaired and that the condition of said bank was such that said impairment could not be made good and that said bank was being conducted in an unsafe manner; that it was improper and dangerous for said bank to continue to receive deposits and to further conduct a banking business and that it was for the best interests of all creditors, depositors and stockholders of said corporation that the same was closed by the Auditor of Public Accounts of the State of Illinois.

The Court further finds that said bank had in its custody, certain property, effects, papers and documents held by said bank for safekeeping only, and to which it does not hold title, and which belong to divers and sundry persons, and that said receiver should be authorized to deliver to the lawful owners thereof, as demanded,
13 all such property, effects, papers and documents held by such bank for safekeeping, as aforesaid.

The Court further finds that said bank had been appointed or named as trustee, executor, administrator, conservator or guardian in numerous and divers estates and was so acting at the time of its closing, and that the receiver thereof should be authorized and directed to take such steps as may be necessary on behalf of said bank within a reasonable time to resign all such trusts, guardianships, conservatorships, and all appointments as executors and administrator, making in each case a proper accounting on behalf of said bank.

It is therefore ordered, adjudged and decreed by the Court that the prayer of the Bill of Complaint in this cause be and the same

is hereby granted; that the action of the Auditor of Public Accounts of the State of Illinois in closing the Woodlawn Trust and Savings Bank and taking possession of its books, records, assets, property and effects be and the same is hereby approved and confirmed.

It is further ordered, adjudged and decreed by the Court that the acts and doing of said Oscar Nelson, as Auditor of Public Accounts of the State of Illinois, in and about the designation and appointment of the said H. C. Vernon as receiver, and in and about the approval of said bond filed by said receiver, and in and about the delivery of said assets, property and effects of said bank to said receiver be, and the same are hereby, in all respects ratified, approved and confirmed.

It is further ordered, adjudged and decreed by the Court that the appointment of H. C. Vernon as receiver of the Woodlawn Trust and Savings Bank be and the same is hereby approved.

14 It is further ordered, adjudged and decreed by the Court that said receiver be, and he is hereby authorized to convert into money and to distribute among creditors of said bank, the assets of said bank, as provided by the Statutes of the State of Illinois, and under the order and direction of this court, to compromise, adjust, compound and settle all controverted questions relating to the collection of notes, accounts receivable and other items, which may be due and owing to said bank, and those which are owing by said bank to other persons, firms or corporations upon such terms and conditions as the receiver may deem just and proper, and as the court may from time to time direct or approve; to sell the personal property and real estate owned by said bank upon such terms as the Court from time to time may direct or approve; to employ such clerical help and assistance as the receiver may require in and about the performance of his duties as such receiver; and said receiver is hereby authorized to adjust and consummate the rights of set-off, which the creditors of said bank may have against their notes or other obligations, and in case of dispute or controversy to have the same determined and adjudicated as the Court may direct.

It is further ordered, adjudged and decreed by the Court that said receiver is hereby vested with whatever powers may be necessary for the purpose of collecting, conserving and reducing to possession all of the property, assets and effects of said Woodlawn Trust and Savings Bank, real, personal and mixed, including all choses in action wherever the same may be situated, and is hereby authorized to perform all such acts as may be necessary to conserve the trust
15 estate and secure and protect the interests of the creditors of said bank.

It is further ordered, adjudged and decreed by the Court and said receiver is hereby directed from time to time to file herein reports of his acts and doings, with the usual powers, rights, duties and obligations of receiver in like cases, and he is hereby given authority to apply to this Court from time to time for the aid and direction of this Court in connection with problems arising in the administration of said estate.

It is further ordered, adjudged and decreed by the Court that said receiver is hereby authorized and empowered to deliver to the rightful owners thereof, property, papers, documents, and effects held by

said bank for safekeeping, and in which said bank has no claim of title or interest.

It is further ordered, adjudged and decreed by the Court that said receiver is hereby authorized to prosecute and defend such actions at law or in equity as may be necessary or proper for the collection or conservation of the assets, property and effects of said estate.

It is further ordered, adjudged and decreed by the Court that in all cases where said bank was at the time of the closing thereof acting as trustee, guardian, executor, administrator, conservator, or in other fiduciary capacity, said receiver is hereby authorized and directed within a reasonable time and on behalf of said bank to resign from all such trusts and is hereby vested with whatever power may be necessary to effect such resignation and to make proper distribution or conveyance of the trust property.

Enter:

(Signed) HUGO M. FRIEND, *Judge*.

16 Said H. C. Vernon, by virtue of said appointment, acted as such receiver until January 13, 1934, on which date, by reason of the resignation of said H. C. Vernon as such receiver, the Auditor of Public Accounts of the State of Illinois appointed the original plaintiff herein, William L. O'Connell, as the successor receiver of said Woodlawn Trust and Savings Bank and to act in the place and stead of said H. C. Vernon as receiver of said bank. Thereupon, on January 13, 1934, the said William L. O'Connell duly qualified as such receiver, and took possession of, and for the purpose of the receivership, the title to, the books, records, and assets of every description of said Woodlawn Trust and Savings Bank, except possession of the assets hereinafter referred to. Thereafter, on February 26, 1934, an order was entered by the Circuit Court of Cook County, Illinois, in the said suit entitled "People of the State of Illinois ex rel. Oscar Nelson, as Auditor of Public Accounts of the State of Illinois vs. Woodlawn Trust and Savings Bank, a corporation," Number B-244876, which order was as follows:

17 STATE OF ILLINOIS,
County of Cook, ss:

In the Circuit Court of Cook County

In Chancery. Number B-244876

PEOPLE OF THE STATE OF ILLINOIS, EX REL. OSCAR NELSON, AS AUDITOR
OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS, COMPLAINANTS

vs.

WOODLAWN TRUST AND SAVING'S BANK, A CORPORATION, DEFENDANT

Order

This cause coming on to be heard this day upon the verified petition of William L. O'Connell, as receiver of Woodlawn Trust and Saving's Bank; and it appearing to the court, and the court finds, that due and timely notice of the hearing on said petition has been

given to all parties of record herein; that on July 1, 1932, Oscar Nelson, as Auditor of Public Accounts of the State of Illinois, under and in accordance with the statutes of the State of Illinois in such case made and provided, designated and appointed H. C. Vernon to be the receiver of Woodlawn Trust and Saving's Bank, a banking corporation of the State of Illinois; that thereafter said H. C. Vernon duly qualified as such receiver and took possession of, and for the purpose of the receivership the title to, the books, records and assets of every description of said bank, and continued to act as such receiver until the 13th day of January, 1934; that prior to the 13th day of January, 1934, said H. C. Vernon tendered and presented his resignation as receiver of said bank to Edward J. Barrett, as the

18 then Auditor of Public Accounts of the State of Illinois and as successor in office to said Oscar Nelson, and on the last date aforesaid, namely on to-wit, January 13, 1934, the said Edward J. Barrett, as said Auditor of Public Accounts accepted the said resignation of said H. C. Vernon as receiver of said bank, and required that he make and give a proper report and accounting to said Edward J. Barrett, as said Auditor of Public Accounts, of all matters and things whatsoever carried out and performed by him, as such receiver, for and during the period he acted as such receiver; that on January 13, 1934, the said H. C. Vernon ceased to act and carry out his duties as receiver of said bank, and thereupon the said Edward J. Barrett, as said Auditor of Public Accounts, designated and appointed in writing said William L. O'Connell, as the successor receiver of said bank, and to act in the place and stead of said H. C. Vernon, as receiver of said bank; that pursuant to the said appointment of said William L. O'Connell, as the successor receiver of said bank, he, on January 13, 1934, duly qualified as such receiver, and took possession of, and for the purpose of the receivership the title to, the books, records and assets of every description of said bank, and succeeded to all the rights and duties of his predecessor, said H. C. Vernon; that on July 19, 1932, said Oscar Nelson, as said Auditor of Public Accounts, represented by Oscar Carlstrom, the then Attorney General of the State of Illinois, filed in the above entitled cause a bill for the dissolution of said bank, and upon and pursuant to said bill for dissolution and order of court was entered herein on October 28, 1932, providing, among other things, that the acts and doings of said Oscar Nelson, as said Auditor of Public Accounts, in and about the designation and appointment of said H. C. Vernon, as receiver of said bank, and that the acts and doings of said H. C. Vernon in taking possession of, and for the purpose of

19 the receivership the title to, the books, records and assets of every description of said bank, and in holding and administering the same for the benefit of the creditors of said bank entitled thereto, be in all respects ratified, approved and confirmed; that said William L. O'Connell, ever since the time of the appointment and qualification of said William L. O'Connell, as successor receiver of said bank, up to and including the present time, has been and now is the duly qualified and acting receiver of said bank, and has been and now is holding and liquidating the assets of said bank for the benefit of the creditors entitled thereto, and has been and now is performing all the duties connected with or incidental to the

administration or conduct of said receivership, as required by law; that it has been necessary for the said William L. O'Connell, as said successor receiver, to retain and employ legal counsel and attorneys to aid, assist, advise and represent him in connection with the conduct and administration of this receivership, and that said William L. O'Connell, as said successor receiver, has retained Cooke, Sullivan & Ricks, of Chicago, Illinois, to act as such counsel and attorneys; and the court being fully advised in the premises:

It is hereby ordered, adjudged, and decreed that said William L. O'Connell, as successor receiver of said Woodlawn Trust and Savings Bank, be, and he is hereby, given leave to file this petition herein instanter.

It is further ordered, adjudged, and decreed that the said resignation of said H. C. Vernon, as receiver of said bank, and the termination of his rights and duties as such receiver, be, and the same are hereby, approved, recognized and accepted.

It is further ordered, adjudged, and decreed that the said appointment, qualification and functioning of said William L. O'Connell, as successor receiver of said bank, be, and the same are hereby, made a matter of record herein; that the said appointment, qualification and functioning of said William L. O'Connell, as successor receiver of said bank, be without prejudice to each and all of the matters, things, controversies and proceedings had or pending herein; that said William L. O'Connell, as said successor receiver, be, and he is hereby, substituted in the place and stead of said H. C. Vernon, as said receiver, in all matters, things, controversies and proceedings now pending herein, and that said William L. O'Connell, as said successor receiver, be, and he is hereby, given leave to continue, and maintain or defend, as the case may be, all matters, things, controversies and proceedings now pending herein.

It is further ordered, adjudged, and decreed that said William L. O'Connell, as said successor receiver, be, and he is hereby, permitted to apply to the court herein for authority to sell or compound all bad or doubtful debts, and to sell the real or personal property of said bank, on such terms as the court shall direct, and for authority to borrow money and pledge the assets of said bank as security therefor, and for its direction or adjudication on all matters and things which, under the law or the statutes of the State of Illinois, may be, or are required to be, presented to this court or any other court of record with respect to the conduct and administration of the receivership and liquidation of said bank.

It is further ordered, adjudged, and decreed that the said employment of said Cooke, Sullivan & Ricks to represent and act as solicitors and attorneys for said William L. O'Connell, as said successor receiver, in all matters, things, controversies and proceedings whatsoever, now pending or at any time or times hereafter instituted in this cause, or arising out of, or in any way connected with, the conduct or administration of the receivership and liquidation of said bank, be, and the same is hereby, recognized and made a matter of record herein by this court.

Enter this 26th day of February, A. D. 1934.

(Signed) Judge HUGO FRIEND, *Judge*.

21 The said William L. O'Connell continued to act as receiver of said Woodlawn Trust and Savings Bank, by virtue of his appointment as such pursuant to the said statutes of the State of Illinois, from the time of his appointment as such receiver, as aforesaid, until his death on July 24, 1936.

7. Pursuant to the power conferred upon said Board of Trustees by the Act of Congress hereinabove referred to, creating the Postal Savings System and a board of trustees for the control, supervision, and administration thereof, the Board of Trustees of the Postal Savings System promulgated and issued certain regulations for the guidance of qualified banks and others concerned.

22 8. On or about December 12, 1911, said Woodlawn Trust and Savings Bank made application to the Trustees of the Postal Savings System, in accordance with the laws and said Regulations promulgated and issued by the Board of Trustees of the Postal Savings System, to qualify for deposits of postal savings funds, which said application was granted, and thereafter from time to time, until the closing of the bank of the Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, on June 22, 1932, as aforesaid, postal savings funds were deposited to the credit of the Board of Trustees of the Postal Savings System in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, in the State of Illinois, and, to secure the repayment of such deposits, said Woodlawn Trust and Savings Bank turned over and delivered to the Treasurer of the United States, who was also Treasurer of the Board of Trustees of the Postal Savings System, various bonds which were part of the assets of said Woodlawn Trust and Savings Bank. Among the bonds so turned over and delivered, the said William A. Julian, as Treasurer of the United States and ex-officio Treasurer of the Board of Trustees of the Postal Savings System, still holds and retains and has possession of bonds described as follows:

Fifty-eight (58) 3% United States Treasury Bonds, dated September 15, 1931, redeemable September 15, 1951, due September 15, 1955, in the aggregate principal amount of \$267,500, the said bonds being numbered, respectively, 248, 282, 283, 284, 285, 6600, 6601, 6604, 6605, 6607, 6609, 6611, 6613, 6614, 14419, 14420, 14476, 15367, 15368, 15369, 15370, 19939, 19957, 19959, 20215, 23290, 23580, 23682, 24004, 24043, 24044, 24048, 24049, 47895, 47896, 47897, 47898, 47899, 47900, 47901, 51866, 51867, 51868, 51869, 51870, 72300, 72301, 72302, 72303, 72304, 72305, 72306, 72307, 74545, 74546, 74547, 74548, and 74549.

Seven (7) 3 $\frac{3}{8}$ % United States Coupon Treasury Bonds, dated June 15, 1927, redeemable June 15, 1943, due June 15, 1947, in the aggregate principal amount of \$7,000, the said bonds being numbered, respectively, 00052703, 00052704, 00052705, 00052706, 00052707, 00052708, and 00052709.

23 Ten (10) 4 $\frac{1}{2}$ % Coupon Bonds of the State of Alabama (Series "C" Public Road, Highway & Bridge Bonds) dated December 1, 1923, due December 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 9344, 9345, 9346, 9347, 9348, 9349, 9350, 9351, 9352, and 9353.

Ten (10) 4 $\frac{3}{4}$ % Coupon Bonds of the State of Arkansas (State Toll Bridge Bonds), dated November 1, 1930, due November 1, 1938, in the aggregate principal amount of \$10,000, the said bonds being

numbered, respectively, 382, 385, 386, 387, 404, 405, 406, 407, 408, and 409.

Ten (10) $4\frac{1}{4}\%$ Coupon Bonds of the State of California (Veterans' Welfare Bond Act of 1929), dated February 1, 1931, due February 1, 1941, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, and 1169.

Ten (10) 4% Coupon Bonds of the City of Chicago, Illinois (Revolving Fund Bonds), dated August 1, 1930, due January 1, 1936, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4028, 4029, and 4030.

Ten (10) 5% Bonds of School District Number 89 (Maywood), Cook County, Illinois (School Building Bonds), dated December 31, 1930, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 41, 42, 43, 44, 45, 51, 52, 53, 54, and 55, said bonds numbered 41 to 45, both inclusive, being due January 1, 1943, and bonds numbered 51 to 55, both inclusive, being due January 1, 1944.

Ten (10) 4% Federal Farm Loan 4% Coupon Bonds of the Federal Land Bank of Houston, Texas, dated May 1, 1928, redeemable May 1, 1938, due May 1, 1958, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, M381080, M381081, M381082, M381083, M381084, M381085, M381086, M381087, M381088, and M381089.

Ten (10) $4\frac{3}{4}\%$ Coupon Bonds of the State of Illinois (Service Compensation Bonds, Series B), dated October 1, 1923, due August 1, 1942, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 13113, 13114, 13115, 13116, 13117, 13118, 13119, 13120, 13121, and 13122.

Ten (10) $5\frac{1}{2}\%$ Coupon Bonds of the County of Lenoir, North Carolina (Road and Bridge Funding Bonds), dated April 1, 1919, in the aggregate principal amount of \$10,000, said bonds numbered 87, 88, 89, 90, 91, and 92 for \$1,000 each due April 1, 1938, and said bonds numbered 97, 98, 99, and 100 for \$1,000 each due April 1, 1939.

24 Fifteen (15) 5% Coupon Bonds of the Board of Commissioners of the Port of New Orleans, Louisiana (Port Commission Serial Canal Gold Bonds), dated July 1, 1918, due July 1, 1957, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, A-3177, A-3178, A-3179, A-3180, A-3181, A-3182, A-3183, A-3184, A-3185, A-3186, A-3187, A-3188, A-3189, A-3190, and A-3191.

Ten (10) $4\frac{1}{2}\%$ Coupon Bonds of the State of Louisiana (Highway Bonds, Series E), dated May 1, 1931, due May 1, 1943, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, and 2820.

Eight (8) $4\frac{1}{2}\%$ Coupon Bonds of Montgomery County, Ohio (Edison Avenue Improvement Bonds), dated April 1, 1930, due October 1, 1936, in the aggregate principal amount of \$8,000, the said bonds being numbered, respectively, 43, 44, 45, 46, 47, 48, 49, and 50.

Ten (10) 5% Coupon Bonds of the Proviso Township High School District No. 209, Illinois (School Building Bonds), dated July 1, 1929, due July 1, 1938, in the aggregate principal amount of \$10,000, the

said bonds being numbered, respectively, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

Fifteen (15) 4% Bonds of the City of Seattle, Washington (Seattle Bridge Bonds, Series G-2, 1931), dated September 1, 1931, due September 1, 1959, in the aggregate principal amount of \$15,000, the said bonds being numbered, respectively, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, and 436.

Ten (10) 4 $\frac{3}{4}$ % Coupon Bonds of the State of South Carolina (State Highway Certificate of Indebtedness) dated December 1, 1930, due December 1, 1949, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 16367, 16368, 16369, 16370, 16371, 16596, 16597, 16598, 16599, and 16600.

Five (5) 4% Bonds of the City of Toledo, Ohio (Grade Elimination Bonds—Fourth Series), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 74, 75, 76, 77, and 78.

Five (5) 4% Bonds of the City of Toledo, Ohio (University Farm Building Refunding Bonds), dated June 1, 1931, due September 1, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 42, 43, 44, 45, and 46.

Ten (10) 5 $\frac{1}{2}$ % Bonds of the City of Tulsa, Oklahoma (Sewer Mains and Sub-Main Bonds), dated July 1, 1921, due July 1, 1946, in the aggregate principal amount of \$10,000, the said bonds being numbered, respectively, 276, 282, 283, 284, 285, 286, 287, 288, 289, and 290.

Five (5) 4% Coupon Bonds of the City of Waterloo, Iowa (Eighteenth Street Bridge Bonds), dated July 1, 1931, due July 1, 1939, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 34, 35, 36, 37, and 38.

Five (5) 5% Coupon Bonds of the County of Wayne, North Carolina (School Funding Bonds), dated July 1, 1931, due July 1, 1936, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 16, 17, 18, 19, and 20.

Five (5) 4 $\frac{1}{2}$ % Coupon Bonds of the City of West Allis, Wisconsin (Storm Sewer Bonds for the year 1931), dated March 1, 1931, due March 1, 1944, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 13, 14, 15, 16, and 17.

All of said bonds except said 3 $\frac{3}{8}$ % United States Coupon Treasury Bonds, dated June 15, 1927, in the aggregate principal amount of \$7,000, which were delivered to and pledged with the Treasurer of the United States on or about July 2, 1927, were delivered to and pledged with the Treasurer of the United States, as aforesaid, during the years 1931 and 1932.

Five (5) 4% Coupon Bonds of the Territory of Hawaii (Public Improvement, Series of 1912-13), dated September 3, 1912, due September 3, 1942, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 976, 977, 978, 979, and 980, were turned over and delivered by said Woodlawn Trust and Savings Bank to the Treasurer of the United States on or about October 22, 1913, to secure the repayment of such deposits. Said \$5,000 principal amount of 4% Coupon Bonds of the Territory of Hawaii have been redeemed and the proceeds thereof amounting to \$5,098.88, principal and interest, have been received by the Treasurer of the United States

and by him credited to the Board of Trustees of the Postal Savings System.

9. At the time of the appointment of the said H. C. Vernon as receiver of said Woodlawn Trust and Savings Bank, as aforesaid, on July 1, 1932, the then Treasurer of the United States held in his possession certain other bonds which said Woodlawn Trust and Savings Bank had theretofore turned over and delivered to the

26 Treasurer of the United States to secure the repayment of deposits of postal savings funds to the credit of the Board of Trustees of the Postal Savings System in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, in the State of Illinois, which bonds are described as follows:

Five (5) 4½% bonds of Lake View Township, Illinois (Park Improvement bonds), due July 15, 1934, in the aggregate principal amount of \$5,000, the said bonds being numbered, respectively, 241, 242, 243, 244, and 245;

Four (4) 5% bonds of Proviso Township, Illinois (School Building bonds), due July 1, 1932, in the aggregate principal amount of \$4,000, the said bonds being numbered, respectively, 1, 2, 3, and 407; and

Two (2) 5% bonds of Tuscola Union School District, Illinois, No. 82, due February 1, 1935, in the aggregate principal amount of \$2,000, the said bonds being numbered, respectively, 11 and 12.

All of said bonds matured and the principal amounts thereof were paid to said Treasurer of the United States and by him credited to the Board of Trustees of the Postal Savings System, after the appointment of said H. C. Vernon, as receiver of said Woodlawn Trust and Savings Bank, and the proceeds of said bonds have not been paid to the said H. C. Vernon, or to the plaintiff as receiver of said Woodlawn Trust and Savings Bank.

10. After the closing of the bank of said Woodlawn Trust and Savings Bank by the Auditor of Public Accounts of the State of Illinois, as aforesaid, the Treasurer of the United States collected and received various sums of money for and on account of interest on the said bonds pledged as aforesaid, which have by him been credited to the Board of Trustees of the Postal Savings System, in the aggregate amount of \$90,657.96.

11. At the time that the said Woodlawn Trust and Savings Bank was closed, on June 22, 1932, the deposit of postal savings funds to the credit of the Board of Trustees of the Postal Savings Sys-
27 tem in the bank operated by said Woodlawn Trust and Savings Bank in the City of Chicago, in the State of Illinois, together with interest thereon, amounted to \$454,793.04, no part of which has been repaid.

12. The said Woodlawn Trust and Savings Bank became a member of the Federal Reserve System on January 6, 1920, and continued as such until it suspended as a going institution on June 22, 1932, when the Auditor of Public Accounts of the State of Illinois took control of its affairs as set forth in paragraph 6 of this stipulation. The Federal Reserve stock of said Woodlawn Trust and Savings Bank was canceled August 12, 1932.

By so agreeing that the foregoing facts are true, the parties hereto are not agreeing as to any legal rights or liabilities resulting there-

from, and in particular are not agreeing as to the rights of the parties hereto in and to the bonds turned over and delivered by Woodlawn Trust and Savings Bank to secure the payment of postal savings funds deposited with it to the credit of the Board of Trustees of the Postal Savings System, or in and to the income or proceeds received by the Treasurer of the United States from any of said bonds since June 22, 1932.

Any of the parties hereto shall have the right to offer, upon the hearing of this cause, any evidence not inconsistent with or contradictory to the foregoing facts. All objections and exceptions to the competency, relevancy and materiality of any of said facts are hereby reserved to both parties hereto.

Dated this 28th day of March A. D. 1938.

(s) LLEWELLYN A. LUCE,
COOKE, SULLIVAN & RICKS,

Attorney for Charles H. Albers, as Receiver of Woodlawn Trust and Savings Bank, a corporation.

(s) DAVID A. PINE,
United States Attorney,

28

LESLIE C. GARNETT,
Special Assistant to the Attorney General,

H. L. UNDERWOOD,
Assistant United States Attorney,
Attorneys for James A. Farley, Postmaster General; Henry Morgenthau, Jr., Secretary of the Treasury; Homer S. Cummings, Attorney General, constituting the Board of Trustees of the Postal Savings System; and William A. Julian, Treasurer of the United States and Treasurer of the Board of Trustees of the Postal Savings System.

29 Thereupon, plaintiff offered in evidence a certified copy of the charter of the Woodlawn Trust and Savings Bank, which was received and marked "Plaintiff's Exhibit No. 2", and in words and figures is as follows:

"STATE OF ILLINOIS,
AUDITOR'S OFFICE,
Springfield, April 27, 1905.

To All to Whom these Presents Shall Come, Greeting:

Whereas, Proper evidence has been filed in the office of the Auditor of Public Accounts, showing the organization of the Woodlawn Trust and Savings Bank located at Chicago, County of Cook and State of Illinois, under and in accordance with the provisions of 'An Act concerning Corporations with Banking Powers' approved June 16, 1887, as amended by act approved June 3, 1889, ratified by vote of the people at an election held November 4, 1890;

And Whereas, It appears from the evidence furnished the Auditor, as required by law, that the capital stock of said association, amounting to Two Hundred Thousand Dollars, has been fully paid in, and is now in the custody of the proper officers of said association;

Now, Therefore, I, J. S. McCullough, Auditor of Public Accounts of the State of Illinois, by virtue of the power vested in me by the act aforesaid, do hereby authorize, said Woodlawn Trust and Savings Bank to commence business as a Bank or Banking Association,

under the provisions of said act, for the purpose of discount and deposit, and to buy and sell exchange and to do a general banking business excepting only issuing bills to circulate as money, and with power to loan money on personal and real security and to accept and execute trusts.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of my office, the day and year first above written.

Auditor's Office. Illinois. No. 3687559.

J. S. McCULLOUGH,
Auditor Public Accounts.

Filed for Record Apr. 29, A. D. 1905, at 11 A. M.

ABEL DAVIS,
Recorder."

(The certificate of the Record of Deeds, certifying that the copy is a true copy of the original filed April 29, 1905, is omitted from this transcript.)

Plaintiff also offered in evidence a copy of the regulations issued in 1911, in 1913, in 1916, in 1927, in 1930, and 1931 by the Postal Savings System, under the Act of June 25, 1910, for the guidance of banks qualifying as depositories of Postal Savings Funds. Said copies were received and marked, "Plaintiff's Exhibits No. 3-A, 3-B, 3-C, 3-D, 3-E, and 3-F", respectively.

29a Each of those exhibits contains the following provisions among others:

"The Third Assistant Postmaster General is hereby constituted the agent of the Board of Trustees for all purposes connected with the qualification of depository banks, the fixing of the amounts of securities to be deposited and withdrawn by such banks and the conditions of such deposits and withdrawals, the deposit of postal savings funds to the credit of said Board and the withdrawal and transfer of such funds, the authorization of the sale of securities of banks which fail or decline to repay deposits on demand, the purchase of postal savings bonds for depositors, and the repurchase of such bonds for the purpose of maintaining their parity.

"All correspondence and reports intended for the Board of Trustees shall be addressed to the Third Assistant Postmaster General, Division of Postal Savings, Washington, D. C.

"Bonds or securities conforming to the requirements of section 8 and in the amount specified in the notification of the Third Assistant Postmaster General shall be forwarded by the bank directly to the Treasurer of the United States, Washington, D. C.

"Either registered or coupon bonds will be accepted, but all registered bonds shall be registered in the name of 'The Treasurer of the United States, in trust for the ----- Bank, of -----, as security for postal savings funds.'

"On receipt of notice from the Treasurer of the United States that the securities required of any bank have been received and accepted, the Third Assistant Postmaster General will notify such bank that it has qualified to receive deposits of postal savings funds. He will state the amount fixed as the maximum balance which may be held by such bank, and will instruct the proper postmaster to make deposits therein.

"All postal savings funds are required to be deposited to the credit of the Board of Trustees."

The remainder of said exhibits are not set forth herein but are by stipulation to be availed of to such extent as counsel may desire.

30 Plaintiff then offered in evidence certain receipts, 30 in number, issued by the Treasurer of the United States to the Woodlawn Trust and Savings Bank, showing the deposit with the United States Treasurer of certain bonds to secure postal savings deposits. Said receipts were received and marked "Plaintiff's Exhibits 4-A to 4-DD."

Said receipts are identical in form, and vary only as to date, number, and description of the security receipted for. In the interest of economy, Exhibit 4-A is here set forth in extenso, and thereafter the date and description of the security covered by the other exhibits.

"TREASURY DEPARTMENT,
OFFICE OF THE TREASURER OF THE UNITED STATES,
WASHINGTON, May 14, 1932.

Received of Woodlawn Trust & Savings Bank, Chicago, Illinois. 3% Treasury Bond of 1951-55, as described below, in the name of the Treasurer of the United States, in trust for this bank, amounting to Ten thousand dollars, which are held by the Treasurer of the United States as security for the safe-keeping and prompt payment by that bank of all postal savings funds that have been or may be deposited with it, and for the faithful performance of its duties as a postal savings depository of the United States.

M. LEET,
Acting Assistant Treasurer of the U. S.

P. S. Depository No. 5056.

Date of bonds Sept. 15, 1931; rate 3%; redeemable 9-15-51; due 9-15-55; numbers 23682; amounts \$10,000; secures \$10,000; coupons \$150.00; due Mar.-Sept. 15th."

31 Plaintiff's Exhibit 4-B, receipt dated March 17, 1932, P. S. Depository No. 5056, covers five \$10,000 3% Treasury Bonds of 1951-55—Total \$50,000.

Plaintiff's Exhibit 4-C, receipt dated December 30, 1931, P. S. Depository No. 5056, covers two \$10,000 Treasury Bonds of 1951-55—Total \$20,000.

Plaintiff's Exhibit 4-D, receipt dated October 15, 1931, P. S. Depository No. 5056, covers three \$1,000, one \$5,000, and one \$10,000 United States 3% Coupon Treasury Bonds of 1951-55—Total \$18,000.

Plaintiff's Exhibit 4-E, receipt dated November 6, 1931, P. S. Depository No. 5056, covers two \$1,000 and two \$10,000 United States 3% Coupon Treasury Bonds of 1951-55—Total \$22,000.

Plaintiff's Exhibit 4-F, receipt dated October 8, 1931, P. S. Depository No. 5056, covers four \$500, seven \$1,000, two \$5,000, and one \$10,000 United States 3% Coupon Treasury Bonds of 1951-55—Total \$29,000.

Plaintiff's Exhibit No. 4-G, receipt dated December 8, 1931, P. S. Depository No. 5056, covers two \$10,000 United States 3% Coupon Treasury Bonds of 1951-55—Total \$20,000.

Plaintiff's Exhibit No. 4-H, receipt dated June 21, 1932, P. S. Depository No. 5056, covers one \$500, thirteen \$1,000, five \$5,000, and six \$10,000 3% Treasury Bonds of 1951-55—Total \$98,500.

Plaintiff's Exhibit No. 4-I, receipt dated July 2, 1927, P. S. Depository No. 5056, covers seven \$1,000 United States 3 $\frac{3}{8}$ % Coupon Treasury Bonds of 1943-47—Total \$7,000.

Plaintiff's Exhibit No. 4-J, receipt dated August 7, 1931, P. S. Depository No. 5056, covers ten \$1,000 4 $\frac{1}{2}$ % Coupon Bonds of the State of Alabama (Series "C" Public Road, Highway & Bridge Bond)—Total \$10,000.

Plaintiff's Exhibit No. 4-K, receipt dated January 17, 1931, P. S. Depository No. 5056, covers ten \$1,000 4 $\frac{3}{4}$ % Coupon Bonds of the State of Arkansas (State Toll Bridge Bond)—Total \$10,000.

Plaintiff's Exhibit No. 4-L, receipt dated April 13, 1931, 32 P. S. Depository No. 5056, covers ten \$1,000 4 $\frac{1}{4}$ % Coupon Bonds of the State of California (Veterans' Welfare Bond Act of 1929)—Total \$10,000.

Plaintiff's Exhibit No. 4-M, receipt dated March 9, 1931, P. S. Depository No. 5056, covers ten \$1,000 4% Coupon Bonds of the City of Chicago, Ill. (Revolving Fund Bond)—total \$10,000.

Plaintiff's Exhibit No. 4-N, receipt dated December 29, 1931, P. S. Depository No. 5056, covers ten \$1,000 School District Number 89 (Maywood), Cook County, Illinois (School Building Bond)—total \$10,000.

Plaintiff's Exhibit No. 4-O, receipt dated August 7, 1931, P. S. Depository No. 5056, covers ten \$1,000 Federal Farm Loan 4% Coupon Bonds of the Federal Land Bank of Houston, Texas—total \$10,000.

Plaintiff's Exhibit No. 4-P, receipt dated August 1, 1931, P. S. Depository No. 5056, covers ten \$1,000 4 $\frac{3}{4}$ % Coupon Bonds of the State of Illinois (Service Compensation Bond, Series B)—total \$10,000.

Plaintiff's Exhibit No. 4-Q, receipt dated August 7, 1931, P. S. Depository No. 5056, covers six \$1,000 and four \$1,000 5 $\frac{1}{2}$ % Coupon Bonds of the County of Lenoir, North Carolina (Road and Bridge Funding Bond)—total \$10,000.

Plaintiff's Exhibit No. 4-R, receipt dated January 17, 1931, P. S. Depository No. 5056, covers fifteen \$1,000 5% Coupon Bonds of the Board of Commissioners of the Port of New Orleans, Louisiana (Port Commission Serial Canal Gold Bond)—total \$15,000.

Plaintiff's Exhibit No. 4-S, receipt dated August 1, 1931, P. S. Depository No. 5056, covers ten \$1,000 4 $\frac{1}{2}$ % Coupon Bonds of the State of Louisiana (Highway Bond, Series E)—total \$10,000.

Plaintiff's Exhibit No. 4-T, receipt dated March 19, 1931, P. S. Depository No. 5056, covers eight \$1,000 4 $\frac{1}{2}$ % Coupon Bonds of Montgomery County, Ohio (Edison Avenue Improvement Bond)—total \$8,000.

Plaintiff's Exhibit No. 4-U, receipt dated August 14, 1931, P. S. Depository No. 5056, covers ten \$1,000 5% Coupon Bonds of the Proviso Township High School District No. 209, Illinois (School Building Bond)—total \$10,000.

33 Plaintiff's Exhibit No. 4-V, receipt dated May 21, 1932, P. S. Depository No. 5056, covers fifteen \$1,000 City of Seattle, Washington. (Seattle Bridge Bond, Series G-2, 1931)—Total \$15,000.

Plaintiff's Exhibit No. 4-W, receipt dated January 17, 1931, P. S. Depository No. 5056, covers ten \$1,000 4 $\frac{3}{4}$ % Coupon Bonds of the

State of South Carolina (State Highway Certificate of Indebtedness)—Total \$10,000.

Plaintiff's Exhibit No. 4-X, receipt dated December 31, 1931, P. S. Depository No. 5056, covers five \$1,000 City of Toledo, Ohio (Grade Elimination Bonds—Fourth Series)—Total \$5,000.

Plaintiff's Exhibit No. 4-Y, receipt dated January 6, 1932, P. S. Depository No. 5056, covers ten \$1,000 City of Tulsa, Oklahoma (Sewer Mains and Sub-Main Bonds)—Total \$10,000.

Plaintiff's Exhibit No. 4-Z, receipt dated October 15, 1931, P. S. Depository No. 5056, covers five \$1,000 4% Coupon Bonds of the City of Waterloo, Iowa. (Eighteenth Street Bridge Bond)—Total \$5,000.

Plaintiff's Exhibit No. 4-AA, receipt dated August 31, 1931, P. S. Depository No. 5056, covers five \$1,000 5% Coupon Bonds of the County of Wayne, North Carolina (School Funding Bond)—Total \$5,000.

Plaintiff's Exhibit No. 4-BB, receipt dated October 1, 1931, P. S. Depository No. 5056, covers five \$1,000 4 $\frac{1}{4}$ % Coupon Bonds of the City of West Allis, Wisconsin (Storm Sewer Bond For The Year 1931)—Total \$5,000.

Plaintiff's Exhibit No. 4-CC, receipt dated October 22, 1913, P. S. Depository No. 5056, covers five \$1,000 Coupon Bonds of the Territory of Hawaii, (Public Improvement, Series of 1912-13)—Total \$5,000.

Plaintiff's Exhibit No. 4-DD, receipt dated January 2, 1932, P. S. Depository No. 5056, covers five \$1,000 City of Toledo, Ohio (University Farm Building Refunding Bond)—Total \$5,000.

There was offered and received in evidence, marked "Plaintiff's Exhibit No. 5-A," a copy of the application by the Woodlawn Trust and Savings Bank, dated December 12, 1911, to the Board of Trustees, Postal Savings System, for deposit of funds of the Postal Savings System. Said exhibit is in words and figures as follows:

"Copy

WOODLAWN TRUST AND SAVINGS BANK,
1204 EAST 63RD STREET,
Chicago, December 12, 1911.

BOARD OF TRUSTEES,
Postal Savings System, Washington, D. C.

GENTLEMEN: This bank herewith makes application for a deposit of funds not exceeding Two Hundred Thousand Dollars (\$200,000.00) of the Postal Savings System, and submits herewith a copy of their statement of condition rendered to the State Auditor at the opening of business December 6th, 1911, duly certified to by two directors.

Yours respectfully,

(s) J. W. WATSON, *Cashier.*

Encls.
JWW/MB
Copied by VH
Verified by MTD"

There was also offered and received in evidence, as Plaintiff's Exhibit No. 5-B, a copy of a statement made by two directors of the said Bank to the Board of Trustees, Postal Savings System, certifying to the organization and business of said Bank. Said exhibit is in words and figures as follows:

"Copy

WOODLAWN TRUST AND SAVINGS BANK,
1204 EAST 63RD STREET,

35

Chicago, December 11, 1911.

BOARD OF TRUSTEES,
Postal Savings System, Washington, D. C.

GENTLEMEN: We, Wm. D. McKey and Chas. M. Poague, Directors, and John W. Watson, Cashier, of the Woodlawn Trust & Savings Bank, hereby certify that said Bank is a regularly organized Bank, under the laws of the State of Illinois, is engaged in the banking business, and is subject to State supervision and examination.

(s) WILLIAM D. McKEY, *Director.*

(s) CHAS. M. POAGUE, *Director.*

J. W. WATSON, *Cashier.*

Copied by VH.

Verified by MTD."

Plaintiff further offered in evidence, a copy of a letter dated December 19, 1911, from the Secretary of the said Board of Trustees to the said Bank, informing the latter of the approval of its application to receive postal savings deposits. Said letter was received and marked "Plaintiff's Exhibit No. 5-C," and is in words and figures as follows:

"Copy

FL-22.

DECEMBER 19, 1911.

WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Illinois.

GENTLEMEN: By direction of the Board of Trustees the application of your bank to qualify to receive deposits of Postal Savings funds, in connection with the reapportionment of the deposits of the Chicago post office, has been approved. You are requested to transmit before at once to the Treasurer of the United States, Washington, D. C., securities of the classes specified in Section 5 of the regulations for the guidance of banks sufficient in amount to cover deposits of \$5,000 of postal savings funds, your attention being directed particularly to the valuation placed on bonds of classes B and C and to the fact that fractions of a thousand will not be received. Bonds in denominations of less than one thousand dollars will be accepted if offered in multiples of one thousand dollars.

When such securities have been accepted by the Treasurer of the United States, you will be duly informed and the necessary accounting

forms will be sent. The local postmaster will then be instructed to deposit postal savings funds with your bank beginning January 1, 1912.

Very truly yours,

(s) T. L. WEED,
Secretary, Board of Trustees.

AGM-IB

Copied by VH

Verified by MTD"

It was then stipulated by the parties, in open court, that in respect of certain of the bonds pledged with the Treasurer of the United States by the Woodlawn Trust and Savings Bank to secure postal savings deposits, which had matured and the principal amount thereof had been collected by the said Treasurer, after the appointment of the receiver of the said bank, the respective dates on which the Treasurer of the United States received said moneys are as follows:

Lake View Township, Illinois, Park Improvement Bonds in the principal amount of \$5,000, paid on December 17, 1934.

Proviso Township, Illinois, School Building Bonds, due July 1, 1932, in the principal amount of \$4,000, paid on February 25, 1935.

Tuscola Union School District, Illinois, No. 82, Bonds, due February 1, 1935, in the aggregate principal sum of \$2,000, paid March 1, 1935.

Five 4% Coupon Bonds of the Territory of Hawaii, Public Improvement, Series of 1912-13, due September 3, 1942, in the aggregate principal amount of \$5,000, paid October 30, 1935. Thereupon, the Plaintiff rested.

Whereupon, and in support of their case, defendants presented and introduced depositions of John W. F. Smith, Harvey James Keenan, and Horace M. Cooling, taken on their behalf, after due notice, at Chicago, Illinois, before Marvin C. Mixon, a notary public of Cook County, Illinois, on December 16, 1937, to wit:

John W. F. Smith, called as a witness on behalf of the defendants, being duly sworn, testified that he is a Bank Examiner in the State Auditor's Office of Illinois and has been such for six and one-half years.

Pursuant to subpoenas duces tecum, witness produced reports of examinations made of the Woodlawn Trust and Savings Bank of Chicago by bank examiners of the Auditor's Office, covering the period 1911 to 1932.

Witness identified a typewritten statement shown to him as a list of the amounts of Postal Savings Deposits on various dates in the Woodlawn Trust and Savings Bank, together with a list of the securities pledged by the Bank with the Board of Trustees of the Postal Savings System; the data appearing thereon was taken from the reports of the examiners of the said Auditor's Office. Said statement was offered in evidence and was objected to by plaintiff "on the ground it is immaterial."

The document was marked "Defendants' Exhibit B" and is in words and figures as follows, to wit:

"CHICAGO, ILLINOIS.
"December 16, 1937.

"It is stipulated and agreed, by the respective parties, that reports on file in the Office of the Auditor for Public Accounts, State of Illinois, of examinations made by bank examiners of that Office,

38 covering the condition of the Woodlawn Trust & Savings Bank, Chicago, Illinois, disclose the following with respect to deposits of postal savings funds and with respect to securities pledged with the Treasurer of the United States to secure repayment thereof; to wit,

"Examination of December 15, 1911. No record of postal savings funds on deposit. No record of bonds pledged to secure such funds.

"Examination of December 19, 1912. Postal savings on deposit, \$5,535.97. No record of the bonds pledged to secure such funds.

"Examination of February 4, 1914. No record of postal savings funds on deposit. No record of bonds pledged to secure such funds.

"Examination of May 11, 1915. Postal savings funds on deposit, \$12,209.56. No record of bonds pledged to secure such funds.

"Examination of July 12, 1917. Postal savings funds on deposit, \$12,991.82. No record of bonds pledged to secure such funds.

"Examination of December 9, 1918. Postal savings funds on deposit, \$11,400.26. No record of bonds pledged to secure such funds.

"Examination of April 14, 1919. Postal savings funds on deposit, \$13,499.72. Bonds pledged to secure such funds, as follows:

Character of bonds:	Par value
Second Liberty Loan-----	\$2, 000
First Liberty Loan-----	6, 500
Fourth Liberty Loan-----	10, 000
Territory of Hawaii-----	5, 000
Total par value-----	\$23, 500

39 "Statement relative to the Postal Savings transactions of the Woodlawn Trust & Savings Bank, Chicago, Illinois.

"Examination of October 6, 1919. Postal savings funds on deposit, \$11,693.02. No record of bonds pledged to secure such funds.

"Examination of January 17, 1921. Postal savings funds on deposit, \$4,727.25. Bonds pledged to secure such funds, as follows:

Character of bonds:	Par value
First Liberty Loan-----	\$6, 500
Victory Liberty Loan-----	6, 000
Territory of Hawaii-----	5, 000
Total par value-----	\$17, 500

"Examination of February 20, 1922. Postal savings on deposit, \$5,046.16. No record of bonds pledged to secure such funds.

"Examination of May 1, 1923. Postal Savings funds on deposit, \$10,034.30. Bonds pledged to secure such funds, as follows:

Character of bonds:	Par value
First Liberty Loan-----	\$6, 500
Territory of Hawaii-----	5, 000
Total par value-----	\$11, 500

"Examination of April 14, 1924. Postal savings funds on deposit, \$13,499.72. No record of bonds pledged to secure such funds.

"Examination of December 12, 1928. Postal savings funds on deposit, \$20,024.35. No record of bonds pledged to secure such funds.

40 "Examination of May 6, 1925. Postal savings funds on deposit, \$18,903.29. Bonds pledged to secure such funds, as follows:

Character of bonds:	Par value
Territory of Hawaii.....	\$5,000
First Liberty Loan.....	6,500
Second Liberty Loan.....	7,000
Fourth Liberty Loan.....	2,000
Total par value.....	\$20,500

"Statement relative to the Postal Savings transactions of the Woodlawn Trust & Savings Bank, Chicago, Illinois.

"Examination of September 13, 1926. Postal savings funds on deposit, \$19,619.05. No record of bonds pledged to secure such funds.

"Examination of December 12, 1927. Postal savings funds on deposit, \$20,313.91. Bonds pledged to secure such funds, as follows:

Character of bonds:	Par value
Territory of Hawaii.....	\$5,000
U. S. Treasury.....	7,000
U. S. Treasury, First Liberty.....	6,500
Fourth Liberty Loan.....	2,000
Total par value.....	\$20,500

"Examination of December 2, 1929. Postal savings funds on deposit, \$19,925.26. Bonds pledged to secure such funds, as follows:

Character of bonds:	Par value
Territory of Hawaii.....	\$5,000
First Liberty Loan.....	7,600
Fourth Liberty Loan.....	2,000
U. S. Treasury, 3½%.....	7,000
Total par value.....	\$21,600

41 "Examination of December 8, 1930. Postal savings funds on deposit, \$50,099.11. Bonds pledged to secure such funds, as follows:

Character of bonds:	Par value
Territory of Hawaii.....	\$5,000
U. S. Treasury 3½%.....	7,000
First Liberty Loan.....	3,000
Fourth Liberty Loan, 4¼%.....	20,000
Fourth Liberty Loan, 4½%.....	20,000
Total par value.....	\$55,000

In connection with this examination photostat of a sheet of the examiner's report will be submitted showing upwards of \$76,000 in bonds pledged for this purpose.

"Examination of December 15, 1931. Postal savings funds on deposit, \$350,877.63. Bonds pledged to secure such funds, \$398,500.00. Pledged bonds will be shown by photostat of sheet of examiner's report of examination.

"Statement relative to the Postal Savings transactions of the Woodlawn Trust & Savings Bank, Chicago, Illinois.

"Examination of January 22, 1932. Postal savings funds on deposit, \$449,889.95. Bonds pledged to secure such funds, \$473,500.00. Pledged bonds will be shown by photostat of sheet of examiner's report of examination.

"It is further stipulated and agreed that the showing herein set forth will be supplemented, in part, with information of similar character, shown by photostats of certain sheets of examiners' reports of examinations of the Woodlawn Trust & Savings Bank."

42 Witness made an investigation of the reports made by the Woodlawn Bank to the Auditor; those reports during the period 1911 to 1932 do not show specifically the amount of postal savings on deposit in that bank, or the securities or the amount thereof pledged to cover such deposits; such deposits would be shown in "other time deposits."

The reports made by the bank are made on call and are denominated call reports.

Witness was unable to locate any list or record kept by the Auditor of Public Accounts of State banks which had deposits of postal savings funds.

"Mr. UNDERWOOD. Q. Can you say whether or not it was well known in the Auditor's Office that state banks were receiving deposits of Postal Savings Funds?"

"Mr. DINES. We object to that on the ground it is immaterial and incompetent.

"Mr. UNDERWOOD. Q. What was the answer?"

"A. I can't say whether it was well known or not. I would just have to say no, that is—

"Q. Well, was it known?"

"Mr. DINES. We object on the same grounds.

"The WITNESS. Known from our reports, examination reports."

The Auditor makes biennial reports for the Governor and Legislature. Witness has examined such of such reports for the period 1911 to 1935 as were in the Auditor's Office; prior to December 1933, they do not show any item of securities pledged by State banks of Illinois for Postal Savings funds; neither do they show the amount of Postal Savings funds on deposit in such banks. Subsequent to 1933 and after the moratorium, the form of the call reports was changed and the Auditor's Office was able to secure information and the reports subsequent to December 1933 show the par value of the securities pledged to secure Postal Savings Deposits.

43 "Mr. UNDERWOOD. Q. Now, Mr. Smith, at the present time do you know whether there are solvent state banks in Illinois which have on deposit Postal Savings Funds and have pledged securities to secure those funds?"

"Mr. DINES. Now, just a minute. We object to that on the ground it is immaterial and incompetent.

"Mr. GARNETT. May I make the suggestion for the record that it be stipulated and understood that all this testimony is taken subject to your objection to its relevancy and materiality.

"Mr. COOKE. That will be all right.

"Mr. DINES. That will be all right, we can object in court.

"Mr. GARNETT. Surely.

"The WITNESS. Will you read the question?"

"(The question was read.)

"The WITNESS. A. I know that they did have on September 30th.

"Mr. UNDERWOOD. Q. September 30th of what?"

"A. 1937."

Witness is shown a list of State banks of Illinois and states that the banks shown on that list all had securities pledged in connection with their Postal Savings deposits as of September 30, 1937, and that the amounts stated on said lists are approximately correct. The document was offered in evidence subject to plaintiff's objection to it on the ground of incompetency and immateriality. It is marked "Defendant's Exhibit C" and is in words and figures as follows:

"Name of bank and location	Security value of pledged collateral
Belleville Bank & Trust Co., Belleville, Ill.	\$7,000
State Bank of Cherry, Cherry, Ill.	25,970
Banco di Napoli Trust Co. of Chicago, Chicago, Ill.	45,000
44 State Bank of Collinsville, Collinsville, Ill.	5,100
State Bank of East Moline, East Moline, Ill.	10,000
Effingham State Bank, Effingham, Ill.	5,000
Bank of Evansville, Evansville, Ill.	49,570
Fairbury State Bank, Fairbury, Ill.	5,000
State Bank of Geneva, Geneva, Ill.	30,000
Peoples State Bank, Gillespie, Ill.	10,400
Montgomery County Loan & Trust Co., Hillsboro, Ill.	101,500
Farmers State Bank & Trust Co., Jacksonville, Ill.	5,000
Farmers & Miners Bank, Ladd, Ill.	13,690
Farmers State Bank of Lawrenceville, Lawrenceville, Ill.	25,000
Monmouth Trust & Savings Bank, Monmouth, Ill.	80,000
State Bank of Niantic, Niantic, Ill.	12,000
Jefferson Tr. & Savings Bank of Peoria, Peoria, Ill.	21,200
First State Bank of Red Bud, Red Bud, Ill.	5,000
Red Bud Trust Co., Red Bud, Ill.	28,300
Rock City Bank, Rock City, Ill.	10,000
State Bank of St. Charles, St. Charles, Ill.	33,000
First Tr. & Savings Bank of Watseka, Watseka, Ill.	20,000
First State Bank of Wenona, Wenona, Ill.	5,000
Western Springs State Bank, Western Springs, Ill.	10,000"

Witness does not know whether any action has been taken by the Office of the Auditor of Public Accounts of the State of Illinois with respect to calling attention of these solvent banks listed on Exhibit "C" to the fact that the giving of securities for Postal Savings Funds is deemed by that officer or the State authorities or State courts to be beyond the charter powers of such institutions. He would not be in a position to know. Nothing in the records that he has passed on or which has come to his attention indicated any such action by the auditor.

Witness is shown a letter dated May 3, 1932, purporting to be signed by Oscar Nelson, on the letterhead of the State Auditor's
45 Office. The name Oscar Nelson was signed by Mr. Drennan in charge of receiverships in the Southern Division. Said letter was offered in evidence subject to plaintiff's objection on the ground of incompetency and immateriality. Said document was marked "Defendant's Exhibit D" and is in words and figures as follows:

"STATE OF ILLINOIS,
OFFICE OF THE AUDITOR OF PUBLIC ACCOUNTS,
Springfield, May 3, 1932.

"BOARD OF TRUSTEES,
Postal Savings System, Washington, D. C.

Attention: Mr. W. T. S. Rollins, Director

"GENTLEMEN: We have received correspondence from several of the Receivers of State Banks in the State of Illinois in regard to deposits of Postal Savings money wherein the collateral will not sell for enough to pay these deposits in full, and the correspondence from you to these Receivers indicates that you will not sell the bonds upon their request, unless the Auditor of Public Accounts will forward you a letter bearing the seal of his office, stating that a check covering such difference will be sent in settlement of the account.

"Under the laws of Illinois, you, of course, are entitled to convert the collateral into cash and apply the same on your claim, and you would be entitled to file a common claim against the bank for the full amount of the deposit, and both of these avenues could be pursued, and, no doubt, such course would enable you to collect your claim in full.

46 "This Department is not authorized, under the State statutes, to allow you a preferred claim or to order the Receiver to pay you in cash. It is possible that, under the Government statutes, the balance due, after you had sold the collateral, would be considered as a preferred claim, and we would be glad to have you send us citations regarding this, and, if it is decided that the balance due you would be a preferred claim, we can arrange to have our local courts allow a preferred claim and see that you are paid in full within a reasonable length of time.

"We are anxious to cooperate with you in handling these matters and would be glad to have you correspond with us until such time as we can work out a program which will be satisfactory to all concerned.

"Very truly yours,

"(Signed) OSCAR NELSON,
"Auditor of Public Accounts.

"Signed by A. R. Drennan, Auditor in charge of Receiverships."

Cross-examination by Mr. DINES:

There are twenty-four banks listed in Defendant's Exhibit C. There were approximately 500 operating solvent State banks in the State of Illinois on September 30, 1937.

Harvery James Keenan, called as a witness on behalf of the defendants, being duly sworn, testified that he is deputy receiver of the Woodlawn Trust and Savings Bank, and has been such since January, 1934. His duties in that position are the handling of all the details of the liquidation of the bank for Mr. Albers, the receiver whose functions are more or less supervisory over him.

47 The Woodlawn Trust and Savings Bank has paid two dividends since it went into receivership; one of 15 per cent in March, 1935, and the other of 15 per cent in June, 1937.

"Mr. DINES. It is understood that the same agreement as to objections—

"Mr. UNDERWOOD. Oh, yes.

"Mr. DINES. Applies to this witness and any other witnesses in the taking of the depositions?

"Mr. UNDERWOOD. Yes.

"Mr. DINES. That we do not have to specifically object in order to preserve our objections.

"Mr. GARNETT. Yes, to all the testimony."

Witness identifies certain correspondence shown him as being letters emanating from the receiver of the Woodlawn Trust and Savings Bank to the director or other officials of the Postal Savings System at Washington, or letters received from the director of the Postal Savings System addressed to the receiver. Said letters were offered in evidence, marked "Defendants' Exhibits E-1 to E-10s," both inclusive, and are in words and figures as follows:

Defendants' Exhibit E-1

"WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Ill., January 29, 1934.

"W. T. S. ROLLINS, Director,
Postal Savings System, Washington, D. C.

"DEAR SIR: At your earliest convenience will you please send us a detailed statement showing the balance due the Board of Trustees, Postal Savings System from the Woodlawn Trust and Savings Bank, as of February 1, 1934, and greatly oblige.

48 "Yours very truly,

WILLIAM L. O'CONNELL,
Receiver.

By (Signed) H. J. KEENAN,
Deputy Receiver."

HJK
F

Defendants' Exhibit E-2

"EMM:LEC

FEBRUARY 9, 1934.

"Mr. H. J. KEENAN, Deputy Receiver,
Woodlawn Trust and Savings Bank, Chicago, Illinois.

"MY DEAR SIR: In compliance with your letter of January 29, I give you below a statement showing the amount due the Board of Trustees, Postal Savings System, from the closed Woodlawn Trust and Savings Bank as of February 1, 1934:

Principal, date of closing-----	\$449,889.95
Interest, January 1, 1932, to February 1, 1934, incl-----	22,993.78
Insurance charges on unpaid coupons-----	.11
Total-----	\$472,883.84
Interest collections-----	23,988.76
Balance due-----	\$448,895.08

"The daily increase in interest will be \$30.67895.

"By direction of the Board of Trustees.

Very truly yours,

(Signed) W. T. S. ROLLINS, Director."

49

Defendants' Exhibit E-3

"WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Ill., February 15, 1934.

"BOARD OF TRUSTEES,
Postal Savings System, Treasury Department,
Washington, D. C.

"GENTLEMEN: In connection with an examination of the accounts of Mr. H. C. Vernon, former Receiver for the Woodlawn Trust and Savings Bank, Chicago, Illinois, it is respectfully requested that you furnish our auditors, W. T. Clarke & Co., 10 South La Salle Street, Chicago, Illinois, with a statement of the balance due on Postal Savings Funds on deposit in that bank at October 14, 1933.

"Please show the balance at the date the bank closed, June 22, 1932, and other charges and the amount of the receipts applied derived from securities held to secure deposits, for the period from June 22, 1932, to October 14, 1933.

"Kindly forward your reply direct to our auditors at your earliest convenience.

"Yours very truly,

WILLIAM L. O'CONNELL,
Receiver.

By (Signed) HARVEY J. KEENAN,
Deputy Receiver."

HJK/F.

Defendants' Exhibit E-4

50

"WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Ill., June 1, 1934.

"BOARD OF TRUSTEES,
Postal Savings System, Washington, D. C.

"GENTLEMEN: In order to reconcile our accounts, please send us a statement of the amount due the Postal Savings System from this bank as of May 31, 1934.

"Very truly yours,

WILLIAM L. O'CONNELL,
Receiver.

By (Signed) HARVEY J. KEENAN,
Deputy Receiver."

HJK/C

Defendants' Exhibit E-5

"WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Ill., October 4, 1934.

"TREASURY DEPARTMENT,
Washington, D. C.

Attention: CEH*T Re: State of Arkansas Toll Bridge Bonds 4¾%,
due 11/1/38, \$10,000

"GENTLEMEN: We wrote you on September 17 stating that we had the approval of the Auditor of Public Accounts of the State of Illinois to deposit the above bonds for exchange under the Refunding

Plan and asked for your advice as to what action you require to complete the exchange, inasmuch as the bonds are in your possession having been deposited as security for postal savings funds by this bank prior to its closing. The Circuit Court of Cook County has now issued an order approving the exchange. Please let us hear from you.

"Very truly yours,

WILLIAM L. O'CONNELL,
Receiver.

By (Signed) HARVEY J. KEENAN,
Deputy Receiver."

HJK/C

Defendants' Exhibit E-6

"COOKE, SULLIVAN & RICKS,
310 SOUTH MICHIGAN AVENUE,
Chicago, March 13, 1935.

"BOARD OF TRUSTEES,
Postal Savings System, Washington, D. C.

Attention—Third Assistant Postmaster General

"DEAR SIR: We are attorneys for William L. O'Connell, Receiver of Woodlawn Trust and Savings Bank of Chicago, Illinois. That bank was closed June 22, 1932, and a receiver was appointed on July 1, 1932.

"While the bank was engaged in business, it received from time to time deposits of Postal Savings Funds, and pledged as security therefor certain bonds. When the receiver was appointed on July 1, 1932, the deposit in the Postal Savings account amounted at \$449,338.92, and, as near as we can ascertain, the Treasurer of the United States, being also the Treasurer of the Board of Trustees of the Postal Savings System, held United States Treasury and Territory of Hawaii bonds of the aggregate value of \$279,500.00, and State and Municipal bonds of a par value of \$194,000.00, which had been pledged by the Woodlawn Trust and Savings Bank to secure the Postal Savings deposit. It is our understanding that since the appointment of the receiver, that has been some slight change in the securities held by the United States Treasurer, by reason of certain of the bonds falling due and being presented for payment.

"You are no doubt aware that there are many decisions of courts holding that a state bank cannot, without express authority, pledge any part of its assets to secure deposits, and, in particular, that the Supreme Court of the United States in *Marion vs. Sneed*, 291 U. S. 262 (decided February 5, 1934) held that banks organized under the laws of Illinois do not possess the power to pledge assets to secure public deposits. The question therefore arises whether or not Woodlawn Trust and Savings Bank had any authority to pledge assets to secure the deposit of the Postal Savings funds.

"Apparently there have been no negotiations between the receiver and the Board of Trustees or any action taken by either to dispose of the question of what disposition shall be made of the securities. We therefore suggest that you fix some time in the very near future when

Mr. Dines of our firm can meet in Washington with your proper representative or representatives and attempt to work out some plan for the disposition of the securities. We will be obliged if you
 53 will advise us whether this is agreeable to you and, if so, fix the time and place of such meeting and give us the name or names of the person or persons who will represent the Board of Trustees at such meeting.

"Yours very truly,

(Signed) COOKE, SULLIVAN & RICKS."

HDD:EE

Defendants' Exhibit E-7

"REP: RW

MARCH 23, 1935.

"MESSRS. COOKE, SULLIVAN AND RICKS,

310 South Michigan Avenue, Chicago, Illinois.

"MY DEAR SIR: Referring to your letter of March 13, there is enclosed a copy of my letter of this date to the Receiver of the Woodlawn Trust and Savings Bank pertaining to the inquiries made by you.

"In the event the Receiver of the bank complies with the instructions to effect settlement of the claim of the Board of Trustees, Postal Savings System, against the bank, release of the bonds by the Treasurer of the United States for the purpose of sale will be authorized, and there will be no necessity for a representative of your firm to call at this office unless he desires to do so.

"Very truly yours,

Third Assistant Postmaster General.

Enclosure.

(Date stamped:) Mar 25 1935."

Defendants' Exhibit E-8

REP: RW

"MARCH 23, 1935.

54 "Mr. W. L. O'CONNELL, Receiver,

Woodlawn Trust and Savings Bank, 63rd

Street at Woodlawn Avenue, Chicago, Illinois.

"MY DEAR SIR: This office is in receipt of a letter from Messrs. Cooke, Sullivan, and Ricks, Chicago, relative to the Postal Savings account of the insolvent Woodlawn Trust and Savings Bank, particularly as to disposition to be made of the bonds pledged by the bank as Postal Savings collateral.

"In this connection your attention is directed to my letter of December 4, 1934, giving instructions as to the settlement of the claim of the Board of Trustees, Postal Savings System, against the bank, and also suggesting that the collateral might be sold and the proceeds used to retire the account. As you are no doubt aware, a claim was filed with the former Receiver of the bank, Mr. H. C. Vernon, for the indebtedness as of the date of suspension including accrued interest. However, no dividend payments have been received on the claim up to the present time although the account has been reduced

by redemption of various bonds which were among those held for account of the bank as security for Postal Savings.

"It would be entirely satisfactory to the Board of Trustees, Postal Savings System, to have the \$462,500 bonds sold by the Treasurer of the United States providing that the proceeds therefrom were sufficient to liquidate the Postal Savings account in full. A check would be sent to you for any balance remaining due the bank from the proceeds of the sale. If you desire this action taken, please advise, forwarding a certified copy of your appointment as Receiver of the bank, together with the receipts issued by the Treasurer of the United States for the bonds.

"There is given below a statement showing the amount remaining due the Board of Trustees, Postal Savings System, from the bank after the redemption of the \$2,000 Tuscola Union School District #82, Douglas County, Illinois, bonds, which were a portion of the bank's Postal Savings collateral, as of March 23, 1935:"

Page 2

"Principal, June 22, 1932-----	\$449, 889. 95	
Interest, January 1, 1932, to March 23, 1935, incl-----	35, 511. 54	
Total-----	\$485, 401. 49	
Board of Trustees' Check October 1932-----	. 11	
	\$485, 401. 60	
Interest collected on bonds-----	\$46, 101. 30	
Proceeds from redemptions-----	11, 000. 00	
Total-----	\$57, 101. 30	57, 101. 30
Amount due from bank-----		\$428, 300. 30

"The daily increase in interest will be \$29.16828.

"Very truly yours,

Third Assistant Postmaster General.

"P. S. A copy of this letter is being sent to Messrs. Cooke, Sullivan, and Ricks."

Defendants' Exhibit E-9

"WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Ill., September 30, 1935.

56 "BOARD OF TRUSTEES
Postal Savings System, Washington, D. C.

Re: Your letter of September 25, 1935. REP:RW

"GENTLEMEN: Acknowledgment is made herewith of your letter regarding the postal savings funds on deposit at this bank and accrued interest to September 21, 1935, also indicating interest collections on bonds and redemptions. Regarding the matter of disposing of these securities at this time, please be advised that we are acting on the advice of our counsel, Messrs. Cooke, Sullivan, and Ricks.

"Very truly yours,

WILLIAM L. O'CONNELL, *Receiver.*

WOODLAWN TRUST & SAVINGS BANK,

By (Signed) HARVEY J. KEENAN, *Deputy Receiver.*"

HJK/L

Defendant's Exhibit E-10

REP:RW

"SEPTEMBER 25, 1935.

"Mr. W. L. O'CONNELL, *Receiver,**Woodlawn Trust and Savings Bank, 63rd Street at Woodlawn Avenue, Chicago, Illinois.*

"MY DEAR SIR: Reference is made to my letter of March 23, relative to the Postal Savings account of the insolvent Woodlawn Trust and Savings Bank.

"As no further action has been taken toward settlement of
57 the account, and since no dividend payments have been received on the claim submitted by the Board of Trustees, Postal Savings System, September 19, 1932 (amount of claim \$454,793.04), it is deemed advisable to call to your attention again the fact that if the \$462,500 bonds pledged as Postal Savings collateral were sold, the proceeds would probably cover the full indebtedness of the bank to the Board of Trustees, Postal Savings System. Various redemptions of a portion of the bank's Postal Savings collateral, and interest on its collateral have reduced the account to \$425,841.99 as of September 21, 1935, as shown by the following statement:

Principal, June 22, 1932-----	\$449, 889. 95	
Interest, Jan. 1, 1932, to Sept. 21, 1935, Incl-----	40, 833. 72	
Total-----	\$490, 723. 67	
Board of Trustees' check-----	. 11	
		\$490, 723. 78
Less:		
Interest collected on bonds-----	\$53, 881. 79	
Redemptions-----	11, 000. 00	
	\$64, 881. 79	64, 881. 79
Amount due from bank-----		\$425, 841. 99

The daily increase in interest will be \$29,000.39.

"Your consideration of the matter, with a view to arriving at a settlement as soon as possible, will be appreciated.

"Very truly yours,

Third Assistant Postmaster General,

CC: Messrs. Cooke, Sullivan, and Ricks, 310 S. Michigan Ave., Chicago, Ill."

By stipulation there were introduced in evidence certain
58 letters marked "Defendants' Exhibits D-1 and D-2." These are in words and figures as follows:

Defendants' Exhibit D-1

ID

"MAY 15, 1925.

"Mr. OSCAR NELSON,

*Auditor of Public Accounts,**1300-76 W. Monroe Street, Chicago, Illinois.*

"MY DEAR SIR: In accordance with your request of May 11, I am pleased to inform you that the records show that the Treasurer of the United States held the following described bonds at the close of busi-

ness, May 6, 1925, as security for Postal Savings funds deposited with the Woodlawn Trust and Savings Bank, Chicago, Illinois.

United States 4¼% Second Liberty Loan Converted bonds.....	\$7,000
United States 4¼% Fourth Liberty Loan bonds.....	2,000
Territory of Hawaii (Public Improvement, Series of 1912-13 4% bonds..	5,000
United States 4¼% First Liberty Loan Converted bonds.....	6,500
	\$20,500

"The stamped envelope which accompanied your communication is returned herewith.

"Sincerely yours,

Director."

Enclosure.

Defendants' Exhibit D-2

"State of Illinois Auditor of Public Accounts

59

Banking Department

Inquiries made by this department concerning the affairs of State Banks have to do with the customary examinations made from time to time by the representatives of this Department.

CHICAGO, ILL., May 11, 1925.

DIRECTOR POSTAL SAV. SYSTEM.

Washington, D. C.:

The Books of the Woodlawn Tr. & Sav. Bank, Chicago, Ill. at the close of business May 6, 1925, show that the following items, not yet accounted for by you, were forwarded on the dates given. Please verify the list given below stating whether Paid, Returned, Entered for Collection, Held as Collateral, or in Safe-keeping, and return, officially signed by an officer of the bank or member of the firm, in the addressed envelope herewith, at your earliest convenience.

"Respectfully,

OSCAR NELSON,

Auditor of Public Accounts.

Date sent	Description	Amount	Date due	Sent for	Receipt No. or date of advice	Disposition
5-22-24	2nd L. L. Bonds 4¼.....	5,000	1932	To		
5-25-23	Do.....	2,000	Do	Secure		
2-23-24	4th Do.....	2,000	1938	Postal		
10-10-18	1st Do.....	6,500	1932	Sav.		
10-22-12	Terr. of Hawaii Pub. Imp.....	5,000	1942	Deps.		

(Signed) -----."

Horace M. Cooling, called as a witness on behalf of the defendants, being duly sworn, testified that he is employed as a clerk in the office of Charles H. Albers, Receiver of the Woodlawn Trust and Savings Bank, as has been employed as such since the bank closed. Prior to that time he was employed by said bank from 1911 to 1932, the date that it closed.

Witness is shown certain correspondence passing between the Receiver of the Woodlawn Trust and Savings Bank and the director or other officials of the Postal Savings System of the United States, and identifies the same. These documents, marked "Defendants' Exhibits Nos. F-1 to F-14, inclusive," were received in evidence and are in words and figures as follows:

Defendants' Exhibit F-1

REP:LEC

"JULY 18, 1932.

Mr. H. C. VERNON, *Receiver,*

Woodlawn Trust and Savings Bank, 1180 E. 63rd Street, Chicago, Illinois.

"MY DEAR SIR: The Banking Department of the State of Illinois has informed this office that you have been appointed Receiver for the Woodlawn Trust and Savings Bank, Chicago, Illinois.

"This bank was a qualified depository for Postal Savings funds, and there is given below a statement of the amount due the Board of Trustees, Postal Savings System, from the bank as of July 18, 1932, inclusive:

Principal	-----	\$455, 038. 89
Interest July 1 to 18	-----	559. 48
Total	-----	\$455, 598. 37

"The daily increase in interest will be \$31.0816.

"When the affairs of a bank are to be liquidated, it is usually the practice for the Receiver to pay the amount due the Board of
61 Trustees, Postal Savings System, and to have the bonds pledged as security for the funds returned to him for such disposition as he may regard to be in the interest of the bank's depositors. If you desire to take this action, a check made payable to the order of the Board of Trustees, Postal Savings System, should be sent to this office.

"In order that the bonds may be released subsequent to payment of the account, it will be necessary to forward a letter from you showing disposition to be made of the collateral, together with a certified copy of your appointment, and the receipts issued by the Treasurer of the United States for the bonds.

"It is noted that \$4,000 Proviso Township High School District No. 29, Cook County, Illinois, bonds held for account of the bank as Postal Savings collateral, matured July 1, 1932. As these bonds will no longer draw interest, they should be withdrawn promptly for redemption, and in the event the Postal Savings account is not settled at this time, please forward a letter authorizing the release of the matured bonds together with a copy of your"

Page 2

"appointment and the receipt for the bonds, which is dated August 25, 1931.

"By direction of the Board of Trustees,

"Very truly yours,

(Signed) W. T. S. ROLLINS, *Director.*

Defendants' Exhibit F-2

62

"WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Illinois, August eighth, 1932.

"MR. W. T. S. ROLLINS, *Director,*
Board of Trustees, Postal Savings System,
Washington, D. C.

"DEAR SIR: Referring to your letter of July 18, answer to which has been delayed owing to the fact that the affairs of the bank have been in an unsettled condition.

"On considering this matter it appears to me it would be wise if you agree, to sell the following described U. S. Government bonds—

Par value	Issue	Rate	Maturity
\$98,500	U. S. Treasury Bonds.....	3%	9/15/55-51
169,000	U. S. Treasury Bonds.....	3%	9/15/55-51
7,000	U. S. Treasury Bonds.....	3 3/8%	6/15/47-43
5,000	Territory of Hawaii, Publ. Impr.....	4%	9/3/42

"It seems that this is an opportune time to sell these bonds thereby netting this bank a small profit.

"I should prefer that, if it is entirely agreeable to you, to delay the sale of the Municipal bonds, inasmuch as it would net an insufficient amount to pay off your deposit under present market conditions, and if sold, would show for me, as Receiver, a very substantial loss. Inasmuch as the market is improving, I believe it would be the best policy for your Board, as well as, myself, to delay the sale with the expectation of getting better prices.

63 "Referring to the bonds of the Proviso Township, Ill., S/D No. 209, Building 5% due 7/1/32, I would be pleased if you will send them to me for collection, or, through such other avenue as you may prefer, the receipt for which is enclosed herewith.

"I enclose herewith a certified copy of my appointment, as Receiver of this bank.

"Yours very truly,

(Signed) H. C. VERNON, *Receiver.*"

HCV/F-Encl.

Defendants' Exhibit F-3

REP: LEC

"AUGUST 23, 1932.

Mr. H. C. VERNON, *Receiver,*

Woodlawn Trust and Savings Bank, Chicago, Illinois.

"MY DEAR SIR: The Treasurer of the United States has been authorized to forward for redemption \$4,000 Proviso Township, Illinois, bonds due July 1, 1932, held for account of the closed Woodlawn Trust and Savings Bank, Chicago, Illinois, as Postal Savings collateral. He has been requested to apply the proceeds from the bonds on the amount due the Board of Trustees, Postal Savings System, from the bank, a statement of which as of this date follows:

Principal.....	\$455,038.89
Interest July 1 to August 23, inclusive.....	1,678.42
Total	\$456,717.31

"The daily increase in interest will be \$31.0816.

64 "With reference to your request that \$279,500 Government bonds pledged by the bank as Postal Savings collateral be sold and the remaining bonds held until the market on such bonds improves, you are advised that if the Government bonds are sold, the municipal bonds, when disposed of, may not bring a sufficient amount to liquidate the balance due the Board of Trustees, Postal Savings System, at that time.

"As the Auditor of the Public Accounts of the State of Illinois has previously informed this office that his Department cannot give assurance that a check will be sent in re-imbursement for such amount as may be due when all the bonds are disposed of, the sale of the Government bonds at this time is impracticable. If, however, you desire to have all of the bonds sold which are held as Postal Savings collateral for account of the bank, such action will be taken by this office upon receipt of proper authority from you, it being understood that if the bids for the bonds were not sufficient to liquidate the account, the sale would be held in abeyance until such time as settlement could be made.

"As stated in my letter of July 20, the bonds may be released upon full payment of the account if you prefer to settle the account in that way.

"By direction of the Board of Trustees.

"Very truly yours,

(Signed) W. T. S. ROLLINS, *Director.*"

Defendants' Exhibit F-4

65

"WOODLAWN TRUST AND SAVINGS BANK,
"Chicago, Ill., August 26, 1932.

Mr. W. T. A. ROLLINS, *Director,*

Board of Trustees, Postal Savings System, Washington, D. C.

"MY DEAR SIR: I acknowledge your kind favor of the 23rd and it occurred to me at the time I wrote you that the Government bonds were selling at a rather high figure under present conditions and that it would be better to sell them, you to appropriate the money and thus reduce the balance due you. Of course I realized that the other securities would not be sufficient to reimburse you in full although they have improved as I intimated that I thought they probably would in my former letter. It is entirely agreeable to me to allow the matter to stand in its present condition as this seems to be entirely agreeable to you.

"As I understand it, after the bonds are finally disposed of, if there is not sufficient amount to reimburse you in full it will then be necessary for you to file a claim against me as receiver for the balance due you.

"Yours very truly,

(Signed) H. C. VERNON, *Receiver.*"

HCV LVN

Defendants' Exhibit F-5

"SEPTEMBER 9, 1932.
REP: LEC

66 Mr. H. C. VERNON, *Receiver,*
Woodlawn Trust and Savings Bank, Chicago, Illinois.

"MY DEAR SIR: It is noted from your letter of August 26, that you desire to have the sale of bonds pledged as Postal Savings collateral by the Woodlawn Trust and Savings Bank, held in abeyance for the present.

"This action is agreeable to this office. In the meantime, however, it will be appreciated if you will forward to this office forms to be used in filing a claim for the amount due the Board of Trustees, Postal Savings System, from the bank, in order that it may participate in payments of dividends with other creditors of the bank. It will not be practicable to file a claim for the balance due the Board of Trustees, Postal Savings System, after the bonds are disposed of, if their sale is authorized and if the proceeds are not sufficient to liquidate the account.

"It is possible that if the sale of all of the collateral is authorized at this time, the funds may be sufficient to cover the amount due the Board of Trustees, Postal Savings System. If you desire to take this action and will so inform this office, the matter will be handled accordingly, instead of filing a claim.

"By direction of the Board of Trustees.

"Very truly yours,

(Signed) W. T. S. ROLLINS, *Director.*"

Defendants' Exhibit F-6

67 "WOODLAWN TRUST AND SAVINGS BANK,
"Chicago, Ill., Sept. 12, 1932.

Mr. W. T. ROLLINS, *Director,*
Board of Trustees, Postal Savings System, Washington, D. C.

"DEAR SIR: I acknowledge your kind favor of the 9th, and in compliance with your request I enclose herewith form for filing your claim, which I shall be pleased to receive and place on file.

"I have gone over your collateral today and I find it would be about \$18,000.00 short of paying your claim in full. I would, therefore, suggest that you file the claim and I will hold the matter of selling the securities in abeyance in the anticipation that we may later on get a better market which will enable your claim to be paid in full.

"Trusting this will be agreeable to you, I remain,

"Yours very truly,

(Signed) H. C. VERNON, *Receiver.*"

HCV LVN

Defendants' Exhibit F-7

"WOODLAWN TRUST AND SAVINGS BANK,
 "Chicago, Ill., September 24, 1932.

Mr. W. T. S. ROLLINS, *Director,*
Board of Trustees, Postal Savings System,
 68 *Washington, D. C.*

"DEAR SIR: Referring to our letter of August 8, requesting the sale of the following:

	Current market
\$267,500 U. S. Treasury 3% bonds, due 9/15/55-51-----	97
5,000 Territory of Hawaii, Public Improvement 4% bonds, due 9/3/42-----	95

"I feel that the price of these bonds is now about the same as at the time the request was made owing to the fact that we have received the benefit of the coupons, and I urgently request that you sell all the above bonds and apply toward the reduction of the deposit with us and allow the other bonds to remain in the hopes that the price will be sufficient, at a later date, to pay your indebtedness in full.

"I can see no good reason for withholding this sale and wish to show that progress has been made in the liquidation of this institution.

"I trust that you will cooperate with me, and if for any reason you do not wish to do this, I should appreciate it if you will give me your reason.

"Yours very truly,

(Signed) H. C. VERNON, *Receiver.*"

HCV/F

Defendants' Exhibit F-8

REP:LEC

"SEPTEMBER 19, 1932.

Mr. H. C. VERNON, *Receiver,*
Woodlawn Trust and Savings Bank,
Sixty-third Street at Woodlawn Ave., Chicago, Illinois.

69 "MY DEAR SIR: The form submitted with your letter of September 12 covering claim of the Board of Trustees, Postal Savings System, against the Woodlawn Trust and Savings Bank, Chicago, Illinois, has been executed and is returned herewith.

"As shown in the claim, there is due the Board of Trustees, Postal Savings System, as principal, \$449,889.95, interest to June 22, 1932, the date of suspension, \$4,903.09, making a total indebtedness of \$454,793.04. The daily increase in interest will be \$30.7297.

"With reference to your separate communication of September 12 regarding the collection of interest pledged by the bank as Postal Savings collateral, you are advised that the interest has been credited to the Board of Trustees, Postal Savings System, on the bank's account. Upon settlement of the claim in full, a check for the amount of interest collected will be forwarded by this office.

"By direction of the Board of Trustees.

"Very truly yours,

(Signed) W. T. S. ROLLINS, *Director.*"

Enclosure.

Defendants' Exhibit F-9

DGG:LEC

"SEPTEMBER 30, 1932.

Mr. H. C. VERNON, *Receiver,**Woodlawn Trust and Savings Bank, Chicago, Illinois.*

70 "MY DEAR SIR: In reply to your letter of September 24, I have to advise that the records of this office indicate the Woodlawn Trust and Savings Bank is indebted to the Board of Trustees, Postal Savings System, as of this date, to the total amount of \$452,190.37, as indicated below:

Principal	\$449,338.92
Interest July 1 to September 30, 1932, incl.....	2,851.45
Total.....	\$452,190.37

The daily increase in interest will be \$30.692.

"The above institution pledged with the Treasurer of the United States, Division of Securities, Treasury and Territory of Hawaii bonds having a par and security value of \$279,500, and State and Municipal Bonds having a par value of \$194,000 and security value of \$170,450. From this you will note that the total security value of the bonds is \$449,950.

"If the \$272,500 Treasury and Hawaii bonds were sold as requested, there would remain bonds having a security value of only \$177,450. This latter collateral would consist principally of State and Municipal bonds and the Treasurer of the United States has informed this office that if a re-valuation was made of these bonds at this time, it would show a depreciation. You will readily observe that if the Treasury and Hawaii bonds were sold, and brought as much as \$272,500 (it is possible they would sell for a price in excess of that amount), this would result in an amount still due the Board of Trustees, Postal Savings System, from the bank of \$179,690.37, which would exceed the security value of the remaining bonds.

71 "This office would be happy to assist you in your problem and sell the bonds as requested, but finds it impracticable to do so as long as no assurance is forthcoming that a check will be forwarded to the Board of Trustees, Postal Savings System, for such balance as may be due after all of the bonds are disposed of.

"By direction of the Board of Trustees.

"Very truly yours,

(Signed) W. H. PEARSON, *Acting.*"

Defendants' Exhibit F-10

"WOODLAWN TRUST AND SAVINGS BANK,
"Chicago, Ill., October 19, 1932.

BOARD OF TRUSTEES,

Postal Savings System, Washington, D. C.

Attention Mr. W. H. Pearson, Acting Director

Re: Woodlawn Trust & Savings Bank

"DEAR SIR: Your letter of Sept. 30, 1932, addressed to Mr. H. C. Vernon, Receiver of the Woodlawn Trust & Savings Bank, has been

referred to us by Mr. Vernon. The facts are in substance as follows:

"The Woodlawn Trust & Savings Bank is indebted to the Board of Trustees, Postal Savings System, in the principal sum of \$449,338.92, and your claim interest from July 1, 1932. The Board of Trustees have deposited with them as security for this indebtedness bonds of a total par value of \$473,500.00, the present market
72 value of these bonds being less than the par value. The receiver has asked you to sell these bonds and apply the proceeds to the indebtedness of the Woodlawn Trust & Savings Bank but you find 'it impracticable to do so as long as no assurance is forthcoming that a check will be forwarded to the Board of Trustees, Postal Savings System, for such balance as may be due after all of the bonds are disposed of.'

"It is our opinion that the claim of the Board of Trustees is not a preferred claim against the assets of the Woodlawn Trust & Savings Bank but has the status of a secured claim and under the rules applicable to the liquidation of the estates of insolvent persons in Illinois, a secured claimant is required to convert his security into cash or have the same appraised and file his claim against the insolvent estate for the balance due. In other words, we are of the opinion that you have no right to file your claim for the full amount of the indebtedness and obtain dividends on the full amount of your claim and at the same time hold the security therefor.

"We are advising the receiver to refuse to file or accept your claim until such time as you have sold the collateral in your hands and applied it to the debt, or have had the same appraised, satisfactory to the receiver, and file your claim for the balance due.

"Yours very truly,

"GLENN, SCHWARTZ, REAL & BROWNING,
134 So. LaSalle St., Chicago, Ill.

By (Signed) J. ROY BROWNING."

JRB LVN

Defendants' Exhibit F-11

73

REP: EGB

"NOVEMBER 7, 1932.

Messrs. GLENN, SCHWARTZ, REAL & BROWNING,

134 South LaSalle St., Chicago, Illinois.

"GENTLEMEN: I have your letter of October 19, referring to correspondence with the Receiver of the closed Woodlawn Trust and Savings Bank, Chicago, Illinois, in connection with his request to have a portion of the bonds sold, which are pledged as Postal Savings collateral by the bank, the proceeds to be applied on indebtedness of the bank to the Board of Trustees, Postal Savings System. You state that it is your opinion that the claim of the Board of Trustees is not a preferred claim, but has the status of a secured claim and that the bank's collateral should, therefore, be converted into cash, and a claim filed for the balance due.

"In this connection, attention is invited to Section 3466 of the Revised Statutes of the United States. Furthermore, in the application of the Woodlawn Trust and Savings Bank, to become a depository for Postal Savings funds, it agreed to qualify to receive deposits of Postal Savings funds under the regulations adopted by the Board of Trustees, Postal Savings System, governing the deposit of such

funds in banks and to comply with the requirements of said regulations. A copy of an application form and a copy of the Postal Savings Regulations are enclosed.

"When a qualified Postal Savings depository bank closes, the Receiver may dispose of the account in one of two ways:

74 " (a) He may either pay the full amount due the Board of Trustees, Postal Savings System, and have the bonds released, or,

" (b) The bonds may be sold and the proceeds from the sale, if sufficient, used to retire the amount due the Board of Trustees, Postal Savings System. If the proceeds from the sale of the bonds are insufficient to retire the indebtedness in full, the sale will not be completed, unless notice in writing is received from the proper officer that a check for the resulting difference will be forwarded to the Board of Trustees, Postal Savings System. In this connection your attention is invited to Sections 24 and 25 of the enclosed copy of the Postal Savings regulations.

Messrs. G. S. R. and B., Page 2

"As this office has previously been informed by the Auditor of the State of Illinois, that checks will not be forwarded for balances due the Board of Trustees, Postal Savings System, from closed banks, if the Postal Savings collateral is sold, this office naturally will hold in abeyance the sale of the bonds pledged by the Woodlawn Trust and Savings Bank, of Chicago, as Postal Savings collateral.

"It is noted that you are advising the Receiver to refuse to file or accept a claim until such time as the collateral has been sold and the proceeds therefrom applied on the debt, or until such time as the collateral has been appraised satisfactory to the Receiver and a claim filed for the balance due. In this connection, you are advised the Receiver has not authorized the sale of all of the bank's Postal Savings collateral, but merely \$272,500 Treasury and Hawaii
75 bonds. As stated in a recent letter to the Receiver, the total security value of all of the bonds pledged is \$449,950, against an indebtedness of \$452,190.37 as of September 30, 1932 (the daily increase in interest being \$30.692). It is possible that if all of the bonds, having a par value of \$473,500 were sold, the proceeds would be sufficient to liquidate the account. Upon proper authorization from the Receiver for the sale, the Treasurer of the United States would be authorized by this office to take such action. As quotations on bonds fluctuate hourly, it would not be practicable to have appraisal made of the amount which might be received from their sale. If the proceeds were not sufficient to retire the account, it would appear advisable, inasmuch as a check for the balance cannot be forwarded, for the Board of Trustees, Postal Savings System, to file a claim with the bank, in order that it might participate with other creditors in receiving dividend payments, until such time as these dividends, together with interest collected by the Treasurer of the United States, on the bank's Postal Savings collateral, will reduce the balance due sufficiently to enable the sale of the bonds and retire the indebtedness in full.

"While it is the endeavor of this office to cooperate with banks at all times, it is, nevertheless, charged with the duty of seeing that the Government's interests are fully protected.

"By direction of the Board of Trustees.

"Very truly yours,

(Signed) W. H. PEARSON, *Acting Director.*"

Enclosures.

76

Defendants' Exhibit F-12

"STATE OF ILLINOIS, AUDITOR OF PUBLIC ACCOUNTS,
BANKING DEPARTMENT, 33 NORTH LA SALLE STREET,
Chicago, December 11, 1933.

POSTAL SAVINGS SYSTEM,
Washington, D. C.

"GENTLEMEN: We refer you to your letter of recent date, as follows:
"MR. H. H. EELKEMA, *Principal.*

Proviso Township High School, Maywood, Illinois.

"MY DEAR SIR: I have your letter of November 10 relative \$4,000 Proviso Township High School bonds, held as security for Postal Savings funds for account of the Woodlawn Trust Savings Bank, Chicago, Illinois. As the bank is now closed and under state supervision, it is suggested that you communicate with the Auditor of Public Accounts at Springfield, Illinois, regarding the matter, requesting him to communicate with this office if he desires the release of the bonds for the purpose of exchange."

"In connection with the above letter, please be advised that our approval is hereby granted to release these bonds for the purpose of exchange.

77 "We would like to have you advise as to your policy in the matter of liquidation of securities pledged in lieu of postal savings. It has come to our attention that you do not permit the partial liquidation of these securities but rather insist upon the entire liquidation and payment of the postal savings deposit. It is our opinion that there are many occasions when it is advisable to liquidate certain securities pledged with you because it enables us to take advantage of certain market conditions and we feel that this constitutes sound liquidation instead of having to hold up the program until such time as we are able to make payment in full for the postal savings involved in the transaction. May we have your advice as to this question?

"Yours very truly,

EDWARD J. BARRETT,
Auditor of Public Accounts.

Signed by C. H. Albers.
TRS:MMS."

Defendants' Exhibit F-13

"WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Ill., February 2, 1933.

W. T. S. ROLLINS, *Director,*
Board of Trustees, Postal Savings System, Washington, D. C.

"DEAR SIR: I wish to thank you as well as acknowledge receipt of your letter dated January 18, giving a detailed statement of the

Postal Savings Account of this estate showing the balance of indebtedness due the Board of Trustees, Postal Savings System, as of January 18, 1933, \$454,051.11, with the daily increase of interest being \$31.0606.

"You hold as security U. S. Treasury bonds of the par value of \$279,500, I am informed that in final settlement of this matter these will be allowed at par, inasmuch as the Postal Savings System is a department of the government and I should like to have you advise me if this is the case.

"Of course, I am anxious to show some progress in the matter of the reduction of our indebtedness and believe it is an opportune time now to have this allowance made, and if this is in accordance with the usage of your office, I should like to have you apply the amount of the bonds which are lodged with you as security together with market prices thereon:

Par value	Security	Approx. bid as of 2/1/33	Amount	Total amt.
\$98,500	U. S. Treas. 3s, 9/15/55-51..... Accrued int. to 2/1/33.....	98 $\frac{1}{2}$	\$97,268.75 1,116.33	\$98,385.08
169,000	U. S. Treas. 3s, 8/15/55-51..... Accrued int. to 2/1/33.....	98 $\frac{1}{2}$	166,887.50 1,915.38	168,802.88
7,000	U. S. Tres. 3 $\frac{3}{4}$ % 6/15/47-43..... Accrued int. to 2/1/33.....	102 $\frac{1}{2}$	7,185.94 30.18	7,216.1'
5,000	Territory of Hawaii, 4s, 9/3/42..... Accrued int. to 2/1/33.....	98 $\frac{1}{2}$	4,925.00 65.56	4,990.56
\$279,500	Grand total as of 2/1/33.....			\$279,394.64'2

Page 2

"I should especially like to have this allowed on the debt at this time as it would reduce very materially the carrying charges and I feel that some arrangement may be made by which this could be accomplished—in other words, I should like to have this allowed as an offset, we owing the government and the government owing us—one obligation would wash off the other and I should like to have you be good enough to advise me if this could be accomplished.

"Appended is the list of the bonds held as security for your perusal together with the market value as of February 1, 1933. May I ask that, if it is entirely agreeable to you, to delay the sale of the Municipal bonds inasmuch as the market has improved considerably in the past few months, I believe they will eventually bring higher prices. I have communicated with the Township Treasurer, concerning the \$4,000 par value, Proviso Township, Illinois, S/D #209, Building 5s, which matured July 1, 1932, and have been informed that funds may be available in the near future for the redemption of these bonds, in which event your office will be notified.

"We should be glad to sell from time to time such securities as it would seem advantageous to sell if you wish us to, the bonds to be delivered by you and the entire amount of the proceeds applied toward the reduction of the indebtedness, or, if you prefer to collect the in-

come from the securities and hold them toward eventual payment of the indebtedness, this would be satisfactory to us.

"Thanking you in advance for your kind cooperation, I remain,
"Respectfully,

(Signed) H. C. Vernon,
H. C. VERNON, *Receiver.*"

HCV/F
Encl.

Defendants' Exhibit F-14

80

REP: LEC

"FEBRUARY 27, 1933.

Mr. H. C. VERNON, *Receiver,*
Woodlawn Trust and Savings Bank, Sixty-third Street at Wood-
lawn Avenue, Chicago, Illinois.

"MY DEAR SIR: I have your letter of February 2, (received by this office February 13) relative to the Postal Savings account of the Woodlawn Trust and Savings Bank, Chicago, Illinois.

"Government bonds pledged as Postal Savings collateral are allowed a security value at par. However, such bonds, if sold, may, of course, bring a larger amount. You request that the Government bonds held for the account of the Woodlawn Trust and Savings Bank be given an allowance at par, the amount to be applied on the indebtedness of the bank to the Board of Trustees, Postal Savings System. I regret to state that this cannot be done. Neither can the Treasurer be authorized to sell a portion of the bonds pledged by the bank, unless assurance is received from the State Banking Department that a check will be forwarded to the Board of Trustees, Postal Savings System, for any balance which may remain due after all of the bank's collateral is sold. In this connection, your attention is directed to my letter of September 9, 1930, which fully outlines the situation with regard to selling only the Government bonds and retaining the other bonds pending disposition later.

"As you have been advised, the total security value of all
81 of the bonds pledged is \$449,950 against an indebtedness of \$454,051.11, as of January 18, 1933 (the daily increase in interest being \$31.0606). It is possible that if all of the bonds, having a par value of \$473,500 were sold, the proceeds would be sufficient to liquidate the account. Upon proper authorization from you for the sale the Treasurer of the United States will be authorized by this office to take such action.

"I regret that your request cannot be complied with.

"By direction of the Board of Trustees.

"Very truly yours,

(Signed) W. T. S. ROLLINS, *Director.*"

Witness is shown certain printed cards or folders and identifies them as copies of statements made by the Woodlawn Trust and Savings bank to the State Auditor, pursuant to the quarterly bank call, showing the bank's condition. These cards are circulated by mail in customers' statements and over the counter. The said cards show the bank's condition as of May 12, 1919; the second December 31, 1921; the third April 3, 1923; the fourth September 14, 1923, the fifth March 31, 1934, and the sixth October 10, 1924. Said docu-

ments were offered in evidence and marked "Defendants' Exhibit Nos. G-1 to G-6" and are in words and figures as follows:

88 Cross examination by Mr. DINES:

At the time the Woodlawn Trust and Savings Bank closed June 22, 1932, witness was Assistant Cashier. It closed because the directors decided to close it. They decided to close and then called the State Auditor to take charge, and he took charge. A receiver was appointed 8 or 9 days after the Auditor took charge. The first receiver was Harvey C. Vernon who was succeeded by William L. O'Connell in January 1934. Mr. O'Connell died in August 1936, and Charles H. Albers succeeded him. A receiver is appointed by the State Auditor.

After the foregoing depositions were read, there was then offered and received in evidence an extract from a report dated December 6, 1911, made to the Governor of the State of Illinois by the Auditor of Public Accounts. Said extract (two pages—304 and 305) was marked "Defendants' Exhibit 1" and is in words and figures as follows:

89 *Defendants' Exhibit No. 1*

RECAPITULATION

Aggregate Resources and Liabilities of all the State Banks in Illinois, December 6, 1911, Showing Increase or Decrease as Compared with September 2, 1911, the date of the last statement issued by this department

RESOURCES

	Amount Sept. 2, 1911— 554 banks	Amount Dec. 6, 1911— 561 banks	Increase	Decrease
Loans on real estate.....	\$79,302,096.13	\$84,063,090.82	\$4,760,994.69	-----
Loans on collateral security.....	196,571,916.45	206,612,089.23	10,040,172.78	-----
Other loans and discounts.....	168,708,710.06	168,812,766.52	104,056.46	-----
Overdrafts.....	1,243,880.81	1,185,496.01	-----	\$58,384.80
United States bonds.....	2,440,337.06	1,934,475.17	-----	505,861.89
State, county and municipal bonds.....	25,925,383.44	25,366,755.43	-----	558,628.01
Public service corporation bonds.....	62,316,179.00	65,633,138.88	3,316,959.88	-----
Other bonds and securities.....	29,926,004.64	31,774,653.45	1,848,648.81	-----
Stocks of corporations.....	4,259,145.13	5,157,903.13	898,758.00	-----
Bonds to secure postal deposits.....	-----	21,129.50	21,129.50	-----
Banking house.....	7,391,598.68	7,851,009.38	459,410.70	-----
Real estate other than banking house.....	1,132,683.70	880,409.29	-----	252,274.41
Furniture and fixtures.....	1,322,127.51	1,385,069.21	62,941.70	-----
Other resources.....	218,192.10	250,312.03	32,119.93	-----
Due from banks—				
State.....	34,188,584.94	30,670,942.50	-----	3,517,642.44
National.....	75,428,530.41	68,127,378.87	-----	7,301,151.54
Private and foreign.....	5,295,869.25	9,252,807.31	3,956,938.06	-----
Cash on hand—				
Currency.....	47,675,372.00	45,866,716.00	-----	1,808,656.00
Gold coin.....	6,687,853.50	6,663,965.00	-----	23,888.50
Silver coin.....	1,220,158.95	1,264,659.15	44,500.20	-----
Minor coin.....	169,810.56	181,547.64	11,737.08	-----
Exchanges for clearing house.....	14,639,244.71	8,178,233.40	-----	6,461,011.31
Checks and other cash items.....	2,899,323.66	1,396,939.95	-----	1,502,384.21
Collections in transit.....	4,824,528.30	6,184,297.64	1,359,769.34	-----
Expense.....	17,661.96	15,417.71	-----	2,244.25
Total resources.....	\$773,805,192.95	\$778,731,202.72	\$26,918,137.13	\$21,992,127.36

82

DEFENDANTS' EXHIBIT G-1

Chicago

CONDENSED REPORT OF THE CONDITION OF THE
WOODLAWN TRUST and SAVINGS BANK
 AT THE CLOSE OF BUSINESS MAY 12th, 1919, AS SUBMITTED
 TO THE AUDITOR OF PUBLIC ACCOUNTS, STATE OF ILLINOIS.

RESOURCES.		LIABILITIES.	
Loans and Discounts	2,742,436.32	Capital	250,000.00
Overdrafts	315.68	Surplus and Undivided	
Stocks and Bonds	533,393.75	Profits	179,056.38
Banking House	74,079.57	Reserved for Taxes and	
Real Estate	33,136.03	Interest	6,646.12
Cash and Due from		Dividends Unpaid	7.50
Banks	844,439.20	DEPOSITS	3,792,090.55
Total	4,227,800.55	Total	4,227,800.55

Incorporated May 1, 1905.
A COMPARISON

In 1905:	
Capital	\$200,000.00
Surplus	10,000.00
Undivided Profits	
Total	\$210,000.00
In 1919:	
Capital	\$250,000.00
Surplus	100,000.00
Undivided Profits	70,000.00
Total	\$420,000.00

**THE
 Woodlawn Safety Deposit
 COMPANY**

in addition to its two vaults devoted to
 safety deposit boxes, maintains a
SEPARATE VAULT
 for the care of
**TRUNKS
 HAND BAGS
 BOXES
 BULKY ARTICLES**
 Rates: Fifty cents per month and
 upwards, according to size and value
 of the package.

DEPOSITORY FOR

United States Postal Savings System

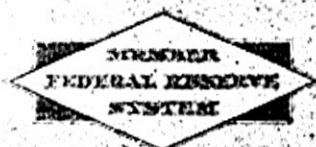
County of Cook

United States Liberty Loan Fund

City of Chicago

Filed R & B

A STATE BANK



DEPOSITORY FOR
THE U. S. POSTAL
SAVINGS FUND
THE COUNTY OF COOK
THE CITY OF CHICAGO

UNDER
UNITED STATES
GOVERNMENT
SUPERVISION

Woodlawn

Trust and Savings

Bank



CAPITAL \$400,000.00
SURPLUS \$100,000.00

OFFICERS:
CHAS. M. POAGUE, PRESIDENT
ARTHUR W. TORIAS, VICE PRESIDENT
JOHN W. WATSON, CASHIER
THEODORE JESSUP, ASST. CASHIER
W. A. WOODSWORTH, ASST. CASHIER
STANLEY G. ROBERTS, ASST. CASHIER

84

DEFENDANTS' EXHIBIT G-3

A STATE BANK



DEPOSITORY FOR
THE CITY OF CHICAGO
THE COUNTY OF COOK
THE STATE OF ILLINOIS
THE U. S. POSTAL
SAVINGS FUND

UNDER
UNITED STATES
GOVERNMENT
SUPERVISION



Woodlawn Trust and Savings Bank

CAPITAL \$400,000.00
SURPLUS \$100,000.00

OFFICERS:

CHAS. M. POAGUE, CHAIRMAN OF BOARD.	
ARTHUR W. TOBIAS, PRESIDENT	OSCAR F. ECKLUND, VICE PRESIDENT
JOHN W. WATSON, V. PRES. & CASHIER	W. A. WOODSWORTH, ASST. CASHIER
THEODORE JESSUP, ASST. CASHIER	STANLEY G. SOBERS, ASST. CASHIER

DIRECTORS:

CHAS. M. POAGUE,	ARTHUR W. TOBIAS,
FRED C. BELL,	IVAN O. ACKLEY,
EDWARD J. STEVENS,	GEORGE H. WILSON,
JOHN W. WATSON,	BISHARCK FEILCHENFELD,
OSCAR F. ECKLUND,	

85 DEFENDANTS' EXHIBIT G-4

OFFICERS
 CHAS. M. POAGUE, CHAIRMAN OF BOARD.
 ARTHUR W. FODIAS, PRESIDENT.
 JOHN W. WATSON, V. PRES. & CASHIER.
 EDWARD D. JESSUP, ATTORNEY AT LAW.
 OSCAR F. SKRLUND, VICE PRESIDENT.
 W. A. WOODSWORTH, ASST. CASHIER.
 STANLEY G. BOBENO, ASST. CASHIER.

DIRECTORS
 W. A. WOODSWORTH, ARTHUR W. FODIAS.
 EDWARD D. JESSUP, JOHN W. WATSON.
 OSCAR F. SKRLUND, GEORGE H. WILSON.
 BISMARCK FEILCHENFELD.

DEPOSITORY FOR
 THE CITY OF CHICAGO
 THE COUNTY OF COOK
 THE STATE OF ILLINOIS

THE U.S. POSTAL
 SAVINGS FUND

UNDER
 UNITED STATES
 GOVERNMENT
 SUPERVISION



Woodlawn
Trust and Savings
Bank

SIXTY-THIRD STREET AT WOODLAWN AVENUE
 CHICAGO, ILLINOIS



86

DEFENDANTS' EXHIBIT G-5

OFFICERS

CHAS. M. POAGUE, CHAIRMAN OF BOARD

ARTHUR W. TORIAS, PRESIDENT OSCAR F. ECKLUND, VICE PRESIDENT

JOHN W. WATSON, V. PRES. & CASHIER

THEODORE JOHNSON, STANLEY G. ROBERG, ASST. CASHIER

HORACE M. COOLING, ASST. CASHIER HENRY T. ROBERG, ASST. CASHIER

DIRECTORS

CHAS. M. POAGUE, ARTHUR W. TORIAS

FRED C. BELL, IVAN D. ACKLEY

EDWARD J. STEVENS, GEORGE H. WILSON

JOHN W. WATSON, BISMARCK FEILCHENFELD

OSCAR F. ECKLUND

DEPOSITORY FOR
THE CITY OF CHICAGO
THE COUNTY OF COOK
THE STATE OF ILLINOIS

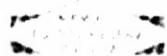
THE U.S. POSTAL
SAVINGS FUND

UNDER
UNITED STATES
GOVERNMENT
SUPERVISION



Woodlawn
Trust and Savings
Bank

SIXTY-THIRD STREET AT WOODLAWN AVENUE
CHICAGO, ILLINOIS



87 DEFENDANTS' EXHIBIT G-6

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OFFICERS

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DEPOSITORY FOR
THE CITY OF CHICAGO
THE COUNTY OF COOK
THE STATE OF ILLINOIS

THE U.S. POSTAL
SAVINGS FUND

UNDER
UNITED STATES
GOVERNMENT
SUPERVISION



Woodlawn
Trust and Savings
Bank

SIXTY THIRD STREET AT WOODLAWN AVENUE
CHICAGO, ILLINOIS



Aggregate Resources and Liabilities of all the State Banks in Illinois, December 6, 1911, Showing Increase or Decrease as Compared with September 2, 1911, the date of the last statement issued by this department—Continued

LIABILITIES

	Amount Sept. 2, 1911— 554 banks	Amount Dec. 6, 1911— 561 banks	Increase	Decrease
Capital stock paid in.....	\$66,938,800.00	\$67,523,800.00	\$585,000.00	
Surplus fund.....	34,143,761.89	34,139,687.85		\$4,074.04
Undivided profits, net.....	13,747,407.18	15,167,691.39	1,420,284.21	
Deposits—				
Time certificates.....	64,646,049.30	68,773,357.54	4,127,308.24	
Savings, subject to notice.....	247,759,737.09	256,206,543.01	8,446,805.92	
Demand, subject to check.....	254,025,943.25	248,367,733.45		5,658,209.80
Demand certificates.....	16,498,057.79	16,642,952.75	144,894.96	
Certified checks.....	2,281,926.53	1,147,677.16		1,134,249.37
Cashier's checks.....	4,619,232.58	4,213,976.31		405,306.27
Postal savings funds.....		7,189.10	7,189.10	
Due to banks, including certificates of deposit—				
State.....	37,653,875.61	35,002,422.53		2,651,453.08
National.....	9,889,209.68	8,597,298.17		1,291,911.51
Private and foreign.....	5,865,983.09	7,284,594.01	1,418,610.92	
Dividends unpaid.....	24,865.53	9,831.78		15,033.75
Reserved for taxes and interest.....	1,528,658.17	2,827,022.88	1,298,364.71	
Contingent fund.....	56,832.83	87,315.09	30,482.26	
Bills payable.....	2,462,500.00	2,874,800.00	412,300.00	
Notes and bills rediscounted.....	41,070.40	95,050.40	53,980.00	
Other liabilities.....	11,621,232.03	9,762,259.30		1,858,972.73
Total liabilities.....	\$773,805,192.95	\$778,731,202.72	\$17,945,220.32	\$13,019,210.55

Total capital, surplus, contingent fund and undivided profits..... \$116,918,494.33, increase, \$2,031,692.43
 Total deposits (including due to banks)..... 646,243,744.03, increase, 3,003,679.11
 Total cash and due from banks..... 177,787,486.96, decrease, 15,241,789.32
 Percent of reserve to deposits (including due to banks) 27.51%.

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RECAPITULATION

Aggregate Resources and Liabilities of the State Banks in Chicago, December 6, 1911, Showing Increase or Decrease as Compared with September 2, 1911, the date of the last statement issued by this department

RESOURCES

	Amount Sept. 2, 1911—60 banks	Amount Dec. 6, 1911—61 banks	Increase	Decrease
Loans on real estate.....	\$31,787,879.56	\$34,687,987.28	\$2,900,107.72	
Loans on collateral security.....	177,642,520.76	187,047,340.90	9,404,820.14	
Other loans and discounts.....	102,152,812.05	99,817,611.89		\$2,335,200.16
Overdrafts.....	72,139.88	88,063.80	15,923.92	
United States bonds.....	2,197,311.58	1,732,857.31		464,454.27
State, county and municipal bonds.....	21,232,779.60	20,431,724.48		801,055.12
Public service corporation bonds.....	55,998,456.13	59,223,342.60	3,224,886.47	
Other bonds and securities.....	22,998,198.03	24,798,892.41	1,800,694.38	
Stocks of corporations.....	3,627,261.71	4,559,787.94	932,526.23	
Banking house.....	3,555,603.35	3,824,896.50	269,293.15	
Real estate other than banking house.....	522,725.99	359,068.69		163,657.30
Furniture and fixtures.....	191,563.43	199,488.50	7,925.07	
Other resources.....	156,425.97	149,766.36		6,659.61
Due from banks—				
State.....	24,114,660.69	22,334,078.81		1,780,581.88
National.....	52,555,099.73	48,740,050.22		3,815,049.51
Private and foreign.....	5,017,103.60	8,963,275.48	3,946,171.88	
Cash on hand—				
Currency.....	42,971,955.00	40,882,707.00		2,089,248.00
Gold coin.....	5,284,737.00	5,232,512.50		52,224.50
Silver coin.....	534,687.30	584,520.65	49,833.35	
Minor coin.....	83,286.05	98,367.61	15,081.56	
Exchanges for clearing house.....	14,221,645.83	7,804,712.33		6,416,933.50
Checks and other cash items.....	2,369,627.81	822,383.78		1,547,244.03
Collections in transit.....	4,501,219.71	5,810,889.57	1,309,669.86	
Expense.....	1,750.37	2,290.50	540.13	
Total resources.....	\$573,791,451.13	\$578,196,617.11	\$23,877,473.86	\$19,472,165.98

Aggregate Resources and Liabilities of the State Banks in Chicago, December 6, 1911, Showing Increase or Decrease as Compared with September 2, 1911, the date of the last Statement issued by this department—Continued.

LIABILITIES

	Amount Sept. 2, 1911—60 banks	Amount Dec. 6, 1911—61 banks	Increase	Decrease
Capital stock paid in.....	\$41, 275, 000 00	\$41, 475, 000 00	\$200, 000 00	
Surplus fund.....	26, 682, 500 00	26, 507, 500 00		\$175, 000 00
Undivided profits, net.....	9, 004, 350 05	9, 700, 492 88	696, 142 83	
Deposits—				
Time certificates.....	32, 950, 281 01	35, 621, 543 66	3, 671, 262 65	
Savings, subject to notice.....	198, 473, 670 64	205, 608, 306 90	7, 134, 636 26	
Demand, subject to check.....	190, 507, 342 36	187, 435, 968 63		3, 071, 373 73
Demand certificates.....	4, 098, 133 14	4, 247, 815 49	149, 682 35	
Certified checks.....	2, 189, 993 50	1, 101, 895 53		1, 088, 097 97
Cashier's checks.....	4, 418, 038 26	4, 005, 963 52		412, 074 74
Postal savings funds.....		5, 134 00	5, 134 00	
Due to banks including certificates of deposit—				
State.....	35, 224, 610 12	33, 074, 920 85		2, 149, 689 27
National.....	9, 069, 320 71	7, 768, 105 32		1, 301, 215 39
Private and foreign.....	4, 705, 109 03	6, 187, 767 80	1, 482, 658 77	
Dividends unpaid.....	3, 921 50	3, 401 50		520 00
Reserved for taxes and interest.....	1, 414, 921 95	2, 630, 685 65	1, 215, 763 70	
Contingent fund.....	38, 637 26	70, 897 13	32, 259 87	
Bills payable.....	2, 106, 500 00	1, 991, 000 00		115, 500 00
Notes and bills rediscounted.....	22, 500 00	21, 500 00		1, 000 00
Other liabilities.....	11, 606, 621 60	9, 738, 718 25		1, 867, 903 35
Total liabilities.....	\$573, 791, 451 13	\$578, 196, 617 11	\$14, 587, 540 43	\$10, 182, 374 45

Total capital, surplus, contingent fund and undivided profits..... \$77,753,890 01, increase, \$753,402 70

Total deposits (including due to banks)..... 486,057,421 70, increase, 4,420,922 93

Total cash and due from banks..... 141,273,497 95, decrease, 10,380,534 77

Per cent of reserve to deposits (including due to banks), 29.06%.

91 Whereupon, Charles H. Kocher, called as a witness on behalf of the defendants, being duly sworn, testified that he is an Assistant Superintendent, Division of Postal Savings, Post Office Department. His duties as such involve helping to superintend assistant superintendents in the conduct and administration of the Postal Savings System, the directing of activities so far as personnel is concerned, and the specific charge of the banking activities of the system. The direct supervision of that work is in the hands of the section chief. He has been in the Post Office Department since August 1, 1912, and in his present position as Assistant Superintendent about four years. The Postal Savings Service is in the Division of Postal Savings, and that is in the Bureau of the Third Assistant Postmaster General. That bureau has all the fiscal duties of the department, which include the money-order business, stamp sales, Postal Savings—anything relating to the postal revenues. The depositors in the System purchase denominational certificates. The funds taken in by postmasters are given the same protection and handling as their money-order or stamp funds, except that in connection with Postal Savings funds the law requires deposit of the funds in banks which qualify by depositing collateral with the Treasurer of the United States. After having so qualified, the postmaster is instructed to put the surplus Postal Savings receipts in the bank to the extent to which it has qualified. If there is no Postal Savings deposit bank in the town, the postmaster deposits his funds in what is termed a general depository for the United States banks qualified to accept deposits to the Treasurer's general account. If there is no general depository in the town, the postmaster remits his

Postal Savings funds, just as he does the money-order or stamp funds, to the central depository post office in the State. There may be one or more central depository post offices in each State. The surplus funds, meaning the difference between the earnings of funds taken in and the interest paid to Postal Savings depositors, are turned over to the revenues of the Post Office Department and become

92 part of the postal revenues, and these postal revenues are used to pay the expenses of the Post Office Department, both the central office and all field expenses. The appropriation and authority for using that is contained in the usual appropriation acts, and so far as the revenues of the Department are available they are used. Beyond that, there is the general fund of the Treasury Department, in the hands of the Treasurer of the United States, that makes up the difference. Postal revenues are used so far as available. Beyond that, the money comes out of the Treasury Department. In that particular, there is no difference between the handling of Postal Savings and the money-order funds. The earnings from the money-order service likewise constitute a postal revenue, just as earnings from the Postal Savings System constitute a postal revenue. Not all the post offices designated are postal savings depositories. There are about 700 postal savings depositories, and in addition there are about 800 branch stations of those offices that accept deposits. The post offices that are designated as depositories of Postal Savings funds are also money-order offices, and sell stamps. The expenses of those offices are met from other receipts, whatever is available. Beyond that, a check is drawn on the Treasurer of the United States. So far as the expenses of the local post office are concerned, the Postal Savings receipts are not available to meet them. They are available after they reach the Treasury Department. The expenses of handling the local available funds are paid from the postal revenues and not particularly from the Postal Savings funds.

"The COURT. What are they?"

"The WITNESS. That is the surplus I discussed, the difference between the earnings of the Postal Savings System and the interest we pay the depositors. They become a part of the funds from which the expenses of the Department are paid. The difference between the earnings of investments of deposits, or interest, and the interest

93 we pay the depositors constitutes a profit which is, according to law, turned over as postal revenues and is available for the expenses of the Department.

"The COURT. These savings accounts bear interest?"

"The WITNESS. Yes, sir.

"The COURT. Where does the Government get that?"

"The WITNESS. The deposits in the bank earn $2\frac{1}{2}$ per cent, and we pay the depositors 2 per cent.

"The COURT. You get your money, then, out of the interest that the banks pay the Post Office Department on the funds which are deposited in the Postal Savings System?"

"The WITNESS. Yes, sir. There was a time when the banks practically held all of our funds; that is not true today. A large part of our funds is held in Government securities."

About 88 or 90 per cent of the funds are invested in Government securities which pay better than $2\frac{1}{2}$ per cent. The appointments of

the employees in the Postal Savings System are made by the Postmaster General. There is an appropriation for each bureau.

"The COURT. Well, employees of the Postal Savings System are paid out of the appropriations by Congress?

"The WITNESS. Yes, sir; that appropriation gives them authority to use the funds so far as they are available but, beyond that, the funds come out of the Treasury."

The Postal Savings System had specific lump sum appropriations in the start, but so far as detailing in a bill specific salaries, his recollection is that superintendents and assistant postmaster generals and those officials were specifically designated, and the clerks were lumped by groups. The Third Assistant gets a lump sum appropriation for all of his activities and not a specific appropriation for the Postal

94 Savings Department or any other department. He gets a lump sum which embraces the Postal Savings System as well as any other. The employees of the post offices in the various sections of the United States which are designated as depositories for Postal Savings funds are paid out of the general revenues of the Post Office Department and they are not paid specially for the work done in the Postal Savings System. A clerk may be a Postal Savings clerk one hour and a post office clerk the next. The Postmaster General reports to Congress the activities of the Postal Savings System. He submits two reports, one special report on behalf of the trustees, and the other a departmental report. The data for these reports is compiled largely in the Bureau of Accounts of the Post Office Department, except the part with respect to Postal Savings, and that specific part is prepared in the Division of Postal Savings, and that is combined with the Bureau of Accounts. The bonded employees who have the Postal Savings Service work are bonded exactly the same, and the same bond covers all their activities, whether money-order or stamp funds, and the bonds run to the United States. All questions of law with respect to matters relating to the Postal Savings System are referred first to the Solicitor of the Post Office Department. He also passes on the legal acceptability of securities.

Cross examination by Mr. DYNES:

"Q. The only part of these postal savings deposits that ever go into the United States Treasury are what we call earnings, being the difference between the amount of interest that is received from banks or from investments in which those funds are invested, and the interest which you pay depositors; is that not right?

"A. No; that is not exactly right. The surplus receipts of post offices—

"Q. (Interposing.) No; I am limiting this to postal savings deposits.

95 "A. Yes; I mean the surplus of the Postal savings deposits, which may not be deposited in banks because banks have not qualified, eventually find their way to the Treasury Department.

"Q. And the Treasury Department acts merely as a depository for those funds?

"A. Yes.

"Q. The only funds that go into general use are these profits, the difference between the amount of interest received and the amount of interest paid?"

"A. Yes."

REDIRECT EXAMINATION

The surplus generally goes to the Treasury Department. The Third Assistant Postmaster General draws the check from the Postal Savings System funds that go to the Treasury Department. That check is drawn on the Treasurer of the United States.

Thereupon, there was offered in evidence the official circular of the Treasury Department, dated October 6, 1917, permitting banks and trust companies in the States to become United States depositories for war loan funds, and a copy of a letter from the Assistant Secretary to the Cashier of the Woodlawn Trust and Savings Bank, dated November 6, 1917, designating the Woodlawn Trust and Savings Bank as a special depository of public moneys, and so forth. This was objected to on the ground of its immateriality.

"The COURT. I think it is admissible. You do claim that you had no right under the state laws to receive these loan deposits?"

"Mr. LUCE. As I understand it, your Honor, this is the Liberty Loan?"

"Mr. GARNETT. No; it is the War Loan.

"Mr. LUCE. Our objection here, if your Honor please, is not 96 as to the competency of this exhibit, but as to its relevancy and materiality to this case, because this case involves the Postal Savings System but, as I understand it, this (indicating) involves Liberty loans of 1917.

"Mr. GARNETT. Yes

"Mr. LUCE. And so, before consenting to this going in, we would like to have Mr. Garnett show the materiality of it.

"The COURT. Is that all it relates to?"

"Mr. GARNETT. Yes; but as I have shown by this, the Woodlawn Trust and Savings Bank was not only a depository of war loan funds, but was equally a depository of Postal Savings System funds, and if it had authority in one instance, it did in the other, to accept the deposits.

"The COURT. It is not a question of accepting deposits.

"Mr. GARNETT. I am prepared to argue that. I have authorities which I think establish the fact that when it became an instrumentality of the Government, it was bound by Federal laws, and I want to show that it became an instrumentality of the Government, not only in postal savings funds which they deposited, but war loan funds, also. I am going to offer now the application to become a member of the Federal Reserve System, and thus become an instrumentality of the Government. I think I have the right to show that, by these applications, then, further, that as an instrumentality of the Government it was bound by the laws which required deposits of Government securities.

"The COURT. I will receive it, and pass on it later."

Whereupon, the exhibit referred to was marked for identification, "Defendants' Exhibit No. 2" and is in words and figures as follows:

97 *Defendants' Exhibit No. 2*

"NOVEMBER 6, 1917.

"CASHIER,

Woodlawn Trust & Savings Bank, Chicago, Ill.

"SIR: By authority conferred upon the Secretary of the Treasury by the act of September 24, 1917, the Woodlawn Trust & Savings Bank, Chicago, Ill., is hereby designated as a special depository of public moneys, and under this designation is authorized to receive only deposits on account of its purchase of Treasury certificates of indebtedness and subscription payments for Liberty Loan bonds. Such deposits as may be made with your bank from time to time shall not exceed in the aggregate at any one time \$200,000.

"A 'War Loan Deposit Account' should be opened on the books of your bank and all moneys deposited thereunder should be credited to 'The Federal Reserve Bank of Chicago, Fiscal Agent of the United States.'

"Details as to the method of handling this account will be made known to you by the Federal Reserve Bank of your district.

"By direction of the Secretary:

"Respectfully,

"(Signed) R. C. LEFFINGWELL,
"Assistant Secretary."

98 *Special deposits of Government funds in connection with subscriptions for bonds and certificates of the United States issued under the act of Congress approved September 24, 1917.*

1917. Department Circular No. 92. (Liberty Loan Circular No. 7.) Division of Public Moneys.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, October 6, 1917.

To Federal Reserve Banks and other banks and trust companies incorporated under the laws of the United States or of any State.

Any incorporated bank or trust company in the United States desiring to participate in deposits of the proceeds of bonds of the Second Liberty Loan and of certificates of indebtedness of the United States issued under the act of Congress approved September 24, 1917, should make application to the Federal Reserve Bank of its district, on Form H hereto attached, and accompany such application by a certified copy of resolutions duly adopted by its board of directors, in Form J hereto attached. In fixing the maximum amount of deposits for which it will apply, the applicant bank or trust company should be guided by the amount of the payments which it expects to have to make, for itself and its customers, on account of allotments of such bonds and certificates, and, as well, by any statutory limitations upon the amount of deposits which the applicant bank or trust company may receive from any one depositor. Any application may be rejected or the applicant may be designated for a smaller maximum

amount than that applied for. After receiving the recommendation of the Federal Reserve Bank, the Secretary of the Treasury will designate approved depositaries.

COLLATERAL SECURITY

Designated depositaries will be required, before receiving deposits, to qualify by pledging, as collateral security for such deposits, securities of the following classes, to an amount, taken at the rates below provided, at least equal to such deposits:

(a) Bonds and certificates of indebtedness of the United States Government, of any issue, including bonds of the Liberty Loans and interim certificates or receipts for payments therefor; all at par.

(b) Bonds issued under the United States farm loan act and bonds of the Philippine Islands, Porto Rico, and the District of Columbia; all at par.

(c) The $3\frac{1}{2}$ per cent bonds of the Territory of Hawaii at 90 per cent of market value; and other bonds of said Territory at market value.

(d) Bonds of any State of the United States, at market value; and approved notes, certificates of indebtedness and warrants issued by any State of the United States, at 90 per cent of market value.

(e) Approved bonds of any county, city, or political subdivision in the United States; and approved notes, certificates of indebtedness and warrants issued by any county or city in the United States which are direct obligations of the county or city as a whole; all at 90 per cent of market value; but not including any such bonds which, at the date of this circular, are at a market price to yield more than $5\frac{1}{2}$ per cent per annum, nor any such other obligations which at the date of this circular are at a market price to yield more than 6 per cent per annum, if held to maturity, according to standard tables of bond values.

(f) Approved dollar bonds and obligations of foreign Governments (and of the dependencies thereof) engaged in war against Germany, issued since July 30, 1914, at 90 per cent of the market value thereof in the United States, and approved dollar bonds and obligations of any province or city within the territory of any such foreign Government or dependency, issued since July 30, 1914, at 75 per cent of the market value thereof in the United States.

(g) Approved bonds, listed on some recognized stock exchange and notes, of domestic railroad companies within the United States; approved equipment trust obligations of such domestic railroad companies; and approved bonds and notes of domestic electric railway and traction companies, telephone and telegraph companies, electric light, power, and gas companies, and industrial companies, secured (directly or by the pledge of mortgage bonds) by mortgage upon physical properties in the United States and listed on some recognized stock exchange: all at 75 per cent of market value; but not including any such bonds or obligations which, at the date of this circular, are at a market price to yield more than $6\frac{1}{2}$ per cent per annum, nor any such notes which at the date of this circular are at a market price to yield more than $7\frac{1}{2}$ per cent per annum, if held to maturity, according to standard tables of bond values.

(h) Commercial paper and bankers' acceptances, having maturity at the time of pledge of not to exceed six months, exclusive of days of grace, and which are otherwise eligible for rediscount or purchase by Federal Reserve Banks; and which have been approved by the Federal Reserve Bank of the district in which the depository is located; at 90 per cent of face value. All such commercial paper and acceptances must bear the indorsement of the depository bank or trust company.

No security shall be valued at more than par. No State or municipal bond, obligation, or evidence of indebtedness shall be accepted if the State or municipality has made default in payment of principal or interest during the past 10 years.

The right is reserved to call for additional collateral security at any time.

The approval and valuation of securities is committed to the several Federal Reserve Banks, acting under the direction of the Secretary of the Treasury. The withdrawal of securities, the pledge of additional securities, and the substitution of securities shall be made from time to time as required or permitted by the Federal Reserve Banks acting under like direction.

SECURITIES COMMITTEES

Each Federal Reserve Bank is authorized to designate a committee, or committees, to be composed of experienced bankers, in such city or cities in its district as may be deemed necessary, to be known as the securities committee. Each securities committee shall consist of not more than three nor less than two members, who shall serve without compensation. It shall be the duty of such securities committee to examine the lists of securities tendered as collateral security for deposits and to transmit them promptly to the Federal Reserve Bank of the district with the committee's recommendation.

CUSTODY OF SECURITIES

All securities accepted as collateral security for deposits hereunder must be deposited with the Federal Reserve Bank of the district in which the depository is located or, by the direction and subject to the order of such Federal Reserve Bank, with a custodian or custodians designated by it, and under rules and regulations prescribed by it.

HOW DEPOSITS ARE TO BE MADE

Each qualified depository will be required to open and maintain for the account of the Federal Reserve Bank of its district, as fiscal agent of the United States, a separate account for deposits to be made hereunder, to be known as the "War Loan Deposit Account."

Qualified depositories will be permitted to make payment by credit when due of amounts payable on subscriptions made by or through them for Treasury certificates of indebtedness and for Liberty Bonds. In order to make payment by credit the depository must notify the Federal Reserve Bank of the district by letter or telegram to reach it on or before the date when such payment is due, and must on said

date issue a certificate of advice to such Federal Reserve Bank stating, that a sum specified (in addition to all other amounts standing to the credit of said fiscal agent with such depository) has been deposited with such depository for the account of such Federal Reserve Bank, as fiscal agent of the United States, in the War Loan Deposit Account.

The unexpended cash proceeds, if any, of the sale of any issue of certificates or bonds will be deposited among the qualified depositories as nearly as may be in proportion to the subscriptions made by and through them for such issue.

All deposits and withdrawals will be made by the Federal Reserve Banks by direction of the Secretary of the Treasury.

The amount deposited with any depository shall not in the aggregate exceed at any one time (a) the maximum amount for which it shall have been designated as a depository, nor (b) the aggregate amount of the collateral security pledged by it taken at the rates hereinbefore provided.

WITHDRAWAL OF DEPOSITS

All deposits will be payable on demand without previous notice.

INTEREST ON DEPOSITS

Each depository will be required to pay interest at the rate of 2 per cent per annum on the average daily balance maintained during the period of the deposit. Interest payments must be made when deposits are finally withdrawn, but not less frequently than quarterly.

W. G. McADOO,
Secretary of the Treasury.

101 Form H—Liberty Loan.

APPLICATION FOR DEPOSITS

Act of September 24, 1917

To the Federal Reserve Bank of _____, fiscal agent
of the United States:

The undersigned bank or trust company, in accordance with the provisions of Treasury Department Circular No. 92, dated October 6, 1917, and pursuant to due action of its board of directors, hereby makes application for the deposit with it of proceeds of the bonds and certificates of indebtedness issued and to be issued from time to time under the act of Congress approved September 24, 1917, the aggregate amount of such deposits not to exceed at any one time \$-----; and assigns and agrees to pledge, from time to time, to and with the Federal Reserve Bank of _____, as fiscal agent of the United States, as collateral security for such deposits as may be made from time to time pursuant to this application, securities of the character and amount required by said circular.

----- of -----,

By -----,
President (Vice-President).

Form J—Liberty Loan.

RESOLUTIONS AUTHORIZING APPLICATION FOR DEPOSITS

Act of September 24, 1917

I hereby certify that the following resolutions were duly adopted at a meeting of the board of directors of the below-named bank (or trust company), which meeting was duly called, and duly held on the _____ day of _____, a quorum being present, and that the said resolutions were spread upon the minutes of said meeting:

Resolved, That in accordance with the provisions of Treasury Department Circular No. 92, dated October 6, 1917, this bank (trust company) make application for the deposit with it of proceeds of the bonds and certificates of indebtedness issued and to be issued from time to time under the act of Congress approved September 24, 1917, the aggregate amount of such deposits not to exceed at any one time \$_____; and assign and agree to pledge from time to time to and with the Federal Reserve Bank of _____, as fiscal agent of the United States, as collateral security for such deposits as may be made from time to time pursuant to this application, securities of the character and amount required by said circular; and

Resolved, That the president, or any vice president, or cashier, or secretary of the undersigned bank (or trust company) is hereby authorized to make application, assignment, and agreement as aforesaid and from time to time to deliver to and pledge with said Federal Reserve Bank, or any custodian or custodians appointed by it, securities of the undersigned bank (or trust company) of a character and amount at least sufficient to secure such deposits according to the terms of said Treasury Department circular, and from time to time to withdraw securities and to substitute other securities and to pledge and deposit additional securities.

In witness whereof I have hereunto signed my name and affixed the seal of the _____ of _____.

Cashier (Secretary).

102 Thereupon, there was offered as Defendants' Exhibit No. 3 the application of the Woodlawn Trust and Savings Bank for membership in the Federal Reserve System, together with a letter from the Secretary of the Federal Reserve System, dated December 17, 1919, setting forth the conditions of the membership.

"The COURT. I will make the same ruling there.

"Mr. DYNES. We merely object to the relevancy.

"The COURT. I will make the same ruling, and reserve decision until later.

"(Whereupon, the exhibit referred to was marked for identification, 'Defendants' Exhibit No. 3.')" and is in words and figures as follows:

Defendants' Exhibit No. 3

"DECEMBER 17, 1919.

"Subject: Conditions of Membership.

WOODLAWN TRUST AND SAVINGS BANK,
Chicago, Ill.

DEAR SIRs: This is to advise you that the Federal Reserve Board has had under consideration your application for 210 shares of the capital stock of the Federal Reserve Bank of Chicago, and is ready to approve the same upon the following conditions:

1. That you shall reduce to the limit prescribed by the laws of Illinois, within a reasonable time, any loan which may be in excess of that limit, and agree that hereafter you will conform with such laws.

2. That although you may accept drafts and bills of any character permitted by the laws of Illinois, you shall agree that the aggregate amount of all acceptances outstanding at any one time shall not exceed the limitations imposed by Section 13 of the Federal Reserve Board, that is, fifty per cent of your capital and surplus for acceptances drawn for the purpose of furnishing dollar exchange in countries specified by the Federal Reserve Board and fifty per cent of such capital and surplus for all acceptances whether domestic or foreign, except that the Federal Reserve Board may increase this limit from fifty per cent to one hundred per cent upon your application, provided, however, that in no event shall the aggregate amount of domestic acceptances outstanding at any one time exceed
103 fifty per cent of your capital and surplus.

3. That except with the approval of the Federal Reserve Board there shall be no change in the general character of your assets or broadening in the functions now exercised by you, such as will tend to affect materially the standard now maintained and required as a condition of membership.

Page 2

"Upon receipt of notice of acceptance by you of the conditions specified in this letter the Federal Reserve Board will give the necessary directions for the issue of stock and the transfer of the required reserve.

"Very truly yours,

"(Signed) W. T. CHAPMAN,
Secretary."

This application must be sent to the Federal Reserve Agent of your district

District No. 7

No. of Shares 210

Application for stock

In the Federal Reserve Bank of Chicago
(For use by State Banks and Trust Companies.)

At a meeting of the Board of Directors of the Woodlawn Trust and
(Name of bank or trust company.)
Savings Bank of Chicago, duly called and held on the 26th day of
(City or town, and State.)

this corporation amounts to \$21,000.00;

September, 1919, the following resolution was offered, seconded, and adopted:

"Whereas, it is the sense of this meeting that application should be made on behalf of this corporation for stock in the Federal Reserve Bank of Chicago, in accordance with the provisions of the Federal Reserve Act and the regulations of the Federal Reserve Board made in pursuance thereof;

"And whereas, six per cent of the paid-up capital and surplus of this corporation amounts to \$21,000.00;

"Now, therefore, be it resolved, That the president or vice president and the cashier or secretary of this corporation be and they are hereby authorized, empowered, and directed to make application for and to subscribe to 210 shares, of a par value of \$100 each, of the capital stock of the Federal Reserve Bank of Chicago, to pay for such stock in accordance with the provisions of the Federal Reserve Act, and to agree for and in behalf of this corporation to comply, upon receipt of the approval of this application by the Federal Reserve Board and its acceptance by this corporation, with all the requirements of the Federal Reserve Act and the regulations of the Federal Reserve Board made in pursuance thereof which are applicable to State banks and trust companies which become members of a Federal Reserve Bank."

I hereby certify that the foregoing is a true and correct copy of a resolution passed by the Board of Directors of this corporation on the date specified.

J. W. WATSON,
Secretary or Cashier.

WOODLAWN TRUST & SAVINGS BK. OF CHICAGO.
(Name of bank or trust company) (City or town)

Pusuant to the foregoing resolution the Woodlawn Trust and Sav-
(Name of bank or trust company.)

ings Bank of Chicago, hereby makes application for 210 shares of the
(City, or town, and State.)

capital stock of the Federal Reserve Bank of Chicago of a par value of \$100 each, amounting to \$21,000.00, and agrees to pay for same in accordance with the provisions of the Federal Reserve Act, and, upon receipt of the approval of this application by the Federal Reserve Board and its acceptance by this corporation, to comply with all the requirements of the Federal Reserve Act and the regulations of the Federal Reserve Board made in pursuance thereof which are appli-

cable to State banks and trust companies which become members of a Federal Reserve Bank.

The following exhibits are attached to and made a part of this application:

Exhibit I.—A statement of the condition of this corporation as of the 29th day of September 1919, duly certified. (See pages 2 and 3 of this application.)

Exhibit II.—A copy of the charter or articles of incorporation of this corporation, with amendments.

Exhibit III.—A statement containing the information requested in the supplement to this application (supplement to F. R. B. Form 83a).

WOODLAWN TRUST & SAVINGS BK. OF CHICAGO,
By CHAS. M. POAGUE, *President*.

Attest:

J. W. WATSON, *Secretary or Cashier*.

To the Federal Reserve Board, Washington, D. C.

Note.—If 6 per cent of the capital and surplus amounts to a sum not divisible by 100, any excess or fractional part of \$100 will entitle the applying bank to one additional share of stock. The sum representing 6 per cent of the capital and surplus should be divided by 100 in order to obtain the number of shares to be applied for, and if an excess of less than \$100 remains, one additional share should be added to the application and included in the subscription of stock to be paid for at par in accordance with the provisions of the Federal Reserve Act.

105 EXHIBIT NO. 1—STATE BANK REPORT

Report of the condition of Woodlawn Trust & Savings Bank of Chicago, in the State of Illinois, at the Close of Business September 29th, 1919

ASSETS

1. Loans and discounts:

Without collateral, time	\$1, 639, 081. 07
Without collateral, demand	91, 935. 04
Loans secured by agricultural products and live stock	
Loans secured by merchandise	
Loans secured by other collateral (except real estate loans)	826, 793. 41
Real estate loans (including mortgages) secured by—	
(1) First mortgages, improved farm lands	
(2) First mortgages, unimproved farm lands	
(3) First mortgages, other properties, improved	894, 967. 44
(4) First mortgages, other properties, unimproved	
(5) Second mortgages, properties of any sort	
(6) Deeds to real estate properties	
(7) Stocks and bonds issued by real estate corporations or based upon real estate securities	

Total.....\$3, 452, 776. 96

Report of the condition of Woodlawn Trust & Savings Bank of Chicago, in the State of Illinois, at the Close of Business September 29th, 1919—Continued

ASSETS—continued

2. Overdrafts.....		\$115. 49
3. Investments:		
(a) United States securities.....	\$383, 664. 30	
(b) State, county, and municipal securities.....	169, 062. 85	
(c) Railroad bonds.....		
(d) Other public service bonds.....		
(e) Bonds or debenture notes issued by real estate holding corporations.....		
(f) Other bonds, debentures and warrants.....	13, 612. 50	
(g) Stocks of real estate corporations.....		
(h) Bank stocks.....		
(i) Other stock investments.....	6, 000. 00	
Total.....		572, 339. 65
4. Banking house.....		75, 000. 00
5. Furniture and fixtures.....		
6. Other real estate owned.....		32, 613. 72
7. Due from reserve depositories.....		807, 153. 53
8. Due from other banks.....		24, 711. 67
9. Checks and other cash items.....		13, 907. 97
10. Cash on hand.....		133, 119. 22
11. Other resources:		
Accrued interest, etc., not entered upon books.....		
Total resources.....		5, 111, 738. 21

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LIABILITIES

1. Capital stock paid in.....		250, 000. 00
2. Surplus.....		100, 000. 00
3. Undivided profits (including accrued interest and any other amounts set aside for special purposes, less current-expense, interest, and taxes paid).....		108, 474. 70
4. Due to banks.....		8, 683. 73
5. Dividends unpaid.....		
6. Deposits:		
(a) Government deposits (including Postal Savings Funds).....	64, 213. 38	
(b) State, county, and other municipal deposits.....	35, 000. 00	
(c) Individual deposits, subject to check without notice.....	2, 933, 325. 12	
(d) Certificates of deposit payable on demand.....	1, 760. 78	
(e) Certified checks.....	9, 516. 19	
(f) Cashier's checks outstanding.....	26, 668. 42	
	3, 070, 483. 89	
(g) Savings deposits or deposits in interest of savings department, time.....	1, 424, 831. 06	
(h) Certificates of deposit, time (due on or after 30 days).....	30, 765. 33	
Total.....		4, 526, 080. 28
7. Notes and bills rediscounted.....		
8. Bills payable, including certificates of deposit representing money borrowed.....		
9. Mortgages:		
On banking house.....		
On other real estate owned.....		
Total.....		

Report of the condition of Woodlawn Trust & Savings Bank of Chicago, in the State of Illinois, at the Close of Business September 29th, 1919—Continued

LIABILITIES—continued

10. Other liabilities:

Accrued interest, taxes, and expenses not entered upon books.....	
Estimated unearned discount.....	
Payments on Victory Liberty Loan Bond subscription.....	118,499.50
Total liabilities.....	5,111,738.21

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CERTIFICATE OF DIRECTORS AND CASHIER

(Should be signed by at least three directors and the cashier or assistant cashier)

We, the undersigned directors and officers of the Woodlawn Trust and Savings Bk. of Chicago, certify that the foregoing is a true and correct statement of the condition of this association on the date specified; that it includes all of the assets and liabilities of the institution; that in our opinion the assets are worth the amount at which they are carried on the books of the association; that the capital stock is unimpaired; that the surplus stated represents actual existing value, and that the supplemental information contained in Exhibit III is true to the best of our knowledge and belief.

CHAS. M. POAGUE,
ARTHUR W. TOBIAS,
FRED C. BELL,
Directors.
J. W. WATSON,
Cashier.

Dated Oct. 2, 1919.

LOCATION OF APPLYING BANK

City or town, Chicago, 1204 E. 63rd St.
County, Cook.
State, Illinois.
Name of bank, Woodlawn Trust and Savings Bank.

CERTIFICATE OF COUNSEL FOR THE FEDERAL RESERVE BANK

I, Chas. L. Powell, counsel for the Federal Reserve Bank of Chicago, do hereby certify that, in my opinion, the Woodlawn Trust and Savings Bank of Chicago, is legally qualified, under its charter and the laws of the State of Illinois, wherein it was incorporated, to purchase and hold stock in the Federal Reserve Bank of Chicago and to comply with the requirements of the Federal Reserve Act and the regulations of the Federal Reserve Board made in pursuance thereof.

CHAS. L. POWELL, *Counsel.*

Oct. 28, 1919.

CERTIFICATE OF APPROVAL

The foregoing application has been approved by the Federal Reserve Board and the applying bank has been allotted ----- shares of stock in the Federal Reserve Bank of -----.

_____,
Secretary, Federal Reserve Board.

_____, 1919.

108 Thereupon, there was offered on behalf of the defendants a specimen of the certificate issued by the Postal Savings System for deposits. The same was received in evidence marked "Defendants' Exhibit No. 4" and is in words and figures as follows:

The Defendant then rested.

Thereupon, the argument was made to the Court on behalf of plaintiff and defendants.

Whereupon, the following occurred:

"Mr. DYNES. Now, so far as the argument is concerned that the United States Government has guaranteed the repayment of these, that is a pretty good indication that it is not the United States Government, itself, that is running these——

"The COURT. (Interposing.) I don't think it is necessary to argue about that. Of course, morally the faith of the United States is pledged to see that these postal savings deposits are paid. There is not any doubt about that. Of course, the only point here is whether the United States is a necessary party and whether suit should be brought against the United States. We have a practical case here and it seems to me that, under the laws that we

109 have now, so far as being amenable to suit is concerned, these so-called trustees may be sued without the United States. The United States is not a necessary part of it. I do not think there is any doubt about it.

"Of course I say that with due deference. Of course, I make mistakes; we all do; but I think the suit is properly brought.

"Of course, it seems somewhat strange that this situation went on, year after year, but I have seen that a good many times; a situation that is not lawful would go on until something happened. Take the case of a bank, until the bank fails; then, a receiver is appointed and his duties are to collect the assets of the bank, and the fact that the trustees of the bank have done something they should not have done does not relieve him from his liability and does not act as a bar to his right to recover—I mean, generally speaking.

"You take a case where the transaction has been completed—of course that raises a little different point. Suppose they had taken these deposits and given security, and then had paid all deposits back and got back their security, and completed the transaction, there would not be any chance for anybody getting sued, I suppose.

"But that is not what we have got here. We have got here a case where there is, today, in the possession of these trustees, a large amount of securities which have been deposited with them by an Illinois bank which, in my opinion, according to the tremendous volume of evidence, they had not any right to—there is not any question about that. Under the statute of Illinois, they had no right to it.

DEFENDANT'S EXHIBIT No. 1

POSTAL SAVINGS SYSTEM
 THE FAITH OF THE
UNITED STATES OF AMERICA

IS SOLEMNLY PLEDGED TO THE PAYMENT OF DEPOSITS WITH ACCRUED INTEREST
SPECIMEN
 DEPOSITORY OFFICE

H 00000
 SERIAL NUMBER

NAME OF DEPOSITOR

DATE OF ISSUE

ACCOUNT NUMBER

DATE WHEN INTEREST BEGINS



NOT TRANSFERABLE
NOT NEGOTIABLE

TWO HUNDRED DOLLARS

A. S. Bullock
 President

SERIES OF 1917

The receiver of the bank has imposed upon him the duty, and should recover that if he can, lawfully. We cannot overlook the fact that he is also a trustee in the position of a trustee, that is, he is a man whose duty it is to look out for the interests of creditors and depositors and stockholders. He is a trustee in a very real sense of the word and there is not anything to show, here, that he was a party to any of these transactions.

"So, we have on one side the controversy a trustee who, it seems to me, has the law on his side; and on the other side of the controversy some other trustees who, without meaning to imply that they have personally done anything wrong, nevertheless the situation is one that they are charged with having accepted and demanded this security without lawful right to it, or perhaps I should say they had a lawful right to demand it but they had no lawful right to receive it.

"It is an interesting case, but I think that is the way I will have to hold. I think I will have to award judgment in favor of the plaintiff.

"That is my judgment. I think that plaintiff had no right to pledge these assets with the Federal Authorities, and I don't think the fact that it was going on for many years has anything to do with it. Lots of things go on for years until something happens, an explosion, and then everybody is in trouble."

"Mr. DYNES. Now, we will prepare and submit to the Court findings of fact and conclusions of law?

"The COURT. Yes, and submit them to the other side.

"Mr. DYNES. Yes.

"The COURT. The findings ought to be very simple. If an appeal is taken, the case will go up to the Appellate Court with everything—

I think I will admit all these exhibits that have been offered."

Be it further remembered that the foregoing contains the substance of all of the evidence given on the hearing of this cause, and each of the exceptions stated to have been taken by the attorney for the plaintiffs were so taken and were duly allowed and noted by the court, and in order that each and every thereof may be preserved and made of record this statement of evidence is duly stated, approved, and signed, and ordered to be made of record in the above entitled cause this 21st day of June, 1938.

Approved:

ALFRED A. WHEAT,
Chief Justice.

LLEWELLYN A. LUCE,

COOKE, SULLIVAN & RICKS,

Attorneys for Plaintiff.

DAVID A. PINE,

United States Attorney.

LESLIE C. GARNETT,

Special Assistant to the Attorney General.

HARRY L. UNDERWOOD,

Assistant United States Attorney.

Attorneys for Defendants.

[Endorsement on cover:] No. 7211. James A. Farley et al. Appellants vs. Charles H. Albers as Receiver &c. United States Court of Appeals for the District of Columbia. Filed July 15, 1938. Joseph W. Stewart, Clerk.

No. 7211 FILED DEC 9-1938

Joseph W. Stewart

In the United States Court of Appeals CLERK
for the District of Columbia

APRIL TERM, 1938

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND
HOMER S. CUMMINGS AS TRUSTEES OF THE POSTAL
SAVINGS SYSTEM; WILLIAM A. JULIAN AS TREAS-
URER OF THE UNITED STATES OF AMERICA AND
WILLIAM A. JULIAN AS TREASURER OF THE BOARD
OF TRUSTEES OF THE POSTAL SAVINGS SYSTEM,
APPELLANTS

v.

CHARLES H. ALBERS AS RECEIVER OF WOODLAWN
TRUST AND SAVINGS BANK, A CORPORATION

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

DAVID A. PINE,
United States Attorney.

H. L. UNDERWOOD,
Assistant United States Attorney.

LESLIE C. GARNETT,
*Special Assistant to the Attorney General,
Of Counsel.*

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**In the United States Court of Appeals for
the District of Columbia**

APRIL TERM, 1938

No. 7211

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND
HOMER S. CUMMINGS AS TRUSTEES OF THE POSTAL
SAVINGS SYSTEM; WILLIAM A. JULIAN AS TREAS-
URER OF THE UNITED STATES OF AMERICA AND
WILLIAM A. JULIAN AS TREASURER OF THE BOARD
OF TRUSTEES OF THE POSTAL SAVINGS SYSTEM,
APPELLANTS

v.

CHARLES H. ALBERS AS RECEIVER OF WOODLAWN
TRUST AND SAVINGS BANK, A CORPORATION

*APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLANTS

This appeal is from a decree (R. 31) ordering and directing the defendant Julian, as Treasurer of the United States, to turn over and deliver to the appellee as Receiver of the Woodlawn Trust and Savings Bank certain enumerated bonds pledged to secure the deposit of Postal Savings funds to the credit of the Trustees of the Postal

Savings System in the Woodlawn Trust and Savings Bank, and ordering and directing the defendants Farley, Postmaster General; Morgenthau, Jr., Secretary of the Treasury; and Cummings, Attorney General, Trustees of the Postal Savings System, to pay or cause to be paid out of the Postal Savings funds in their possession or under their control, \$106,657.96, being the principal and interest on bonds pledged by the Woodlawn Trust and Savings Bank with the Treasurer of the United States to secure the deposit of Postal Savings funds in the Woodlawn Trust and Savings Bank and sold, less such dividends as may accrue to the Trustees of the Postal Savings System as general creditors of the Woodlawn Trust and Savings Bank.

STATEMENT OF THE CASE

The Woodlawn Trust and Savings Bank was organized April 27, 1905, under the laws of the State of Illinois and operated as such until June 22, 1932, in the City of Chicago. On the latter date the Auditor of Public Accounts of the State of Illinois found the capital stock of the Bank impaired and one Vernon was appointed to act as Receiver thereof. Upon the resignation of Vernon and the death of his successor, the appellee was appointed Receiver.

On December 12, 1911, the Woodlawn Trust and Savings Bank made application to the Trustees of the Postal Savings System for deposits of Postal Savings funds. This application was granted and

thereafter until the closing of the Bank on June 22, 1932, Postal Savings funds were deposited in said Bank and to secure the repayment of such deposits the Bank turned over and delivered to the Treasurer of the United States various bonds as part of the assets of the said Bank, among which were the bonds now held and retained in the possession of the defendant Treasurer of the United States, as enumerated in the decree (R. 22).

At the time the Woodlawn Trust and Savings Bank was closed, June 22, 1932, the deposit of Postal Savings funds to the credit of the Trustees of the Postal Savings System therein, together with interest, amounted to \$454,793.04, no part of which has been repaid (R. 25).

The Third Assistant Postmaster General is constituted the Agent of the Board of Trustees of the Postal Savings System and acts as such Agent for all purposes connected with the qualifications of depository banks, the fixing of the amount of the securities to be deposited and withdrawn, the conditions of such deposits and withdrawals, the deposit of Postal Savings funds to the credit of the Board, the withdrawal and transfer of such funds, the authorization of the sale of securities of banks which failed to repay deposits on demand and the purchase of Postal Savings Bonds, etc. The duties delegated to the Third Assistant Postmaster General by regulations in this behalf are performed in the Bureau of the Third Assistant Postmaster General which has charge of all of the fiscal duties of the

Post Office Department, such as money order business, stamp sales, Postal Savings, and anything relating to the postal revenues. The funds of the Postal Savings System are received by the Postmaster from depositors and are given the same protection and handling as money order or stamp funds, except that all Postal Savings funds are required by law to be deposited in banks which have qualified by depositing collateral with the Treasurer of the United States or to be remitted to the Central Depository Post Office in the State. Surplus funds, that is the difference between the earnings and the interest paid depositors, become a part of the revenues of the Post Office Department and are used to pay the expenses of that Department (R. 25-26).

The receipt given by the Treasurer of the United States for the securities deposited by the Woodlawn Trust and Savings Bank—the securities claimed herein—states that these securities

are held by the Treasurer of the United States as security for the safekeeping and prompt payment by that bank of all postal savings funds that have been or may be deposited with it, and for the faithful performance of its duties as a postal savings depository of the United States (R. 26).

Postal Savings System employees are appointed by the Postmaster General and paid out of the appropriations of Congress. No specific appropriation for the Postal Savings Department, or any

other department, is made. Local employees of the Post Office designated as depositories of the Postal Savings funds are paid out of the general revenues of the Post Office Department and not specially for work in the Postal Savings System. A clerk may be a Postal Savings clerk one hour and a Post Office clerk the next. The same bond covers all of the activities of the employee (R. 26-27).

On November 16, 1917 the Woodlawn Trust and Savings Bank was designated as a special depository authorized to receive deposits on account of its purchase of Treasury certificates of indebtedness and subscription payments for liberty loan funds not to exceed \$200,000.00 at any one time. (Addition to Record, p. 58.)

On its application the Woodlawn Trust and Savings Bank was on January 16, 1920, admitted to membership and became a member of the Federal Reserve System. It continued as a member of the Federal Reserve System until it suspended on June 22, 1932 (R. 27).

The Auditor of Public Accounts of the State of Illinois was on notice and had knowledge that the Woodlawn Trust and Savings Bank was receiving and had on deposit in its Bank, Postal Savings funds during the period from 1912 to 1932 and that the said Bank had assets pledged to secure repayment of such funds from 1919 to 1932 (R. 28).

The Auditor of Public Accounts made biennial reports to the Governor and General Assembly of

Illinois. In the report of 1911, as shown, there are two entries of December 6, 1911 of Postal Savings funds, one in the amount of \$7,189.10 and the other of \$5,134.00. Such deposits were included in subsequent reports in item designated "Other time deposits," but since December 1933, these reports show the par value of securities pledged to insure Postal Savings funds. There were 24 solvent banks in the State of Illinois on September 30, 1937, having securities pledged to secure the deposits of Postal Savings funds (R. 28).

After the closing of the said Bank, and up to the end of the year 1933, correspondence passed between the Receiver and Director of the Postal Savings System, the Receiver suggesting the sale of the pledged securities and the application of the proceeds to the claim of the Trustees of the Postal Savings System, but the Director then refused to make sale of the securities. On May 3, 1932, the Auditor of Public Accounts of the State of Illinois advised the Board of Trustees that under the laws of Illinois they were entitled to convert the collateral into cash and apply the same on their claim (R. 27).

The then Receiver of the said Bank filed his Bill of Complaint October 28, 1935 (R. 1), alleging that under the statutes of Illinois as construed by its highest court, the Banks of Illinois have never possessed and do not now possess the power of pledging assets to secure the deposits of money made in such Banks; that the pledging of assets of

the bank to secure the deposits of Postal Savings funds was ultra vires and void, that the Receiver was entitled to recover the assets so pledged, and that the moneys received by the defendant Trustees, or any of them, since the closing of the said Bank on account of the principal or interest of any bonds so pledged by the Bank, belonged to the Receiver and should be turned over and delivered and paid to him for the benefit of all creditors and depositors in said Bank. The defendants filed a motion to dismiss the Bill of Complaint (R. 14).

The Court denied the motion to dismiss (R. 14). The defendants answered alleging, among other things (R. 18):

The said Act in Section 9 thereof provides in part as follows: "That postal savings funds received under the provisions of this Act shall be deposited in solvent banks, whether organized under national or state laws, being subject to national or state supervision and examination. * * * The Board of Trustees shall take from such banks such security in public bonds or other securities, supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. The funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein * * * willing to receive such deposits under the terms of this

Act and the regulations made by authority thereof. * * * For the purpose of this Act * * * the word 'bank' shall be held to include savings banks and trust companies doing a banking business."

Sections 16 of said Act declared "The faith of the United States is solemnly pledged to the payment of the deposits made in postal savings depository offices, with accrued interest thereon as herein provided."

The Act of May 18, 1916, c. 126, 39 Stat. 159, amended the Act of June 25, 1910, and in respect of deposits for postal savings funds provided that such deposits could be made in National or State banks "whether members or not of the Federal Reserve System" and in respect of kind or security to be required of such banks, added to the kinds of securities already specified, securities "authorized by Act of Congress."

That the said Act of June 25, 1910, constituted full authority for the receipt and granting by the Board of Trustees of the Postal Savings System of the application made December 12, 1911, by the Woodlawn Trust and Savings Bank for the depositing with it of postal savings funds and said Act as supplemented and amended constituted and was authority for the depositing from time to time in said Bank of other deposits; and for requiring the giving by said Bank of security to safeguard and insure the said deposits.

Defendants further aver that in authorizing the said deposits to be made in the said Bank and in exacting the pledging and in the taking and receiving of the security from said Bank the said Board of Trustees acted in full and strict compliance with the authority and powers conferred upon them by the Congress as aforesaid.

Further, defendants aver that the postal savings funds deposited in said Bank, pursuant to its application therefor under the said Act of Congress as amended and supplemented, constituted, were, and are a special deposit to the return of which the Board of Trustees of the Postal Savings System is entitled as a prior and superior and preferred claim as against plaintiff as Receiver, and those whose interest or interests he represents; that under the express terms of the contract, undertaking, and agreement entered into by the said Bank in respect of and as a condition for the said deposits, the Board of Trustees and the Treasurer of the United States are entitled to the possession of the bonds and securities pledged by said Bank until the amount on deposit to the credit of the Postal Savings funds account of the Postal Savings System is paid in full.

The answer further averred that the action of the Bank in pledging and delivering the securities from time to time was done with full knowledge of the provisions and requirements of the Act of Con-

gress, and was continued for more than twenty years; that this course of dealing was well-known to the officials of the State of Illinois charged with the inspection and supervision of banking institutions, and was not objected to but was tacitly approved, and that like action and conduct was indulged in by like banking institutions of Illinois, and that the Legislature of the State of Illinois was informed of the practice.

It is further averred that if the Bank was without authority to pledge and deliver the securities, then the receipt thereof under the contract and agreement made with the Trustees of the Postal Savings System was wrongful and fraudulent, and that the Bank became, was, and is a Trustee *ex maleficio*, and the return of the deposits made by the said Trustees is a condition precedent to the right of return of the securities pledged or the proceeds thereof. The answer further set up the defenses contained in the motion to dismiss (R. 19).

The case was heard upon the Bill, Answer, and testimony taken. A statement of the evidence is filed as an addition to the record.

The court made findings of fact (R. 21) and conclusions of law (R. 29) and entered a final decree April 14, 1938 (R. 31). From this judgment and decree the defendants appealed in open court (R. 34).

On April 25, 1938, the appellants filed the following (R. 34):

ASSIGNMENT OF ERRORS

1. The Court erred in finding and determining that the Woodlawn Trust and Savings Bank was without authority or power to pledge its assets to secure deposits of postal savings funds in its bank.

2. The Court erred in finding and determining that the Woodlawn Trust and Savings Bank by becoming a member of the Federal Reserve system did not thereby become an instrumentality of the United States and empowered and authorized to pledge its assets to secure deposits of postal savings funds in its bank.

3. The Court erred in not holding and determining that because of its membership in the Federal Reserve system the Woodlawn Trust and Savings Bank was empowered and authorized to pledge its assets to secure deposits of postal savings funds in its bank inasmuch as the Trustees of the Postal Savings System were by statute expressly required to exact security for such deposits.

4. The Court erred in holding and determining that the suit was not one against the United States.

5. The Court erred in holding and determining that the United States was not a necessary and indispensable party to this suit.

6. The Court erred in overruling the motion to dismiss the bill of complaint and in not granting the same.

7. The Court erred in not holding and determining that the Woodlawn Trust and Savings Bank

was warranted in pledging its assets to secure deposits of postal savings funds because of the long existing custom and practice of state banks in Illinois to do so, said practice and custom being well known to and acquiesced in by the Auditor of Public Accounts of the said State.

8. The Court having held and determined that the Woodlawn Trust and Savings Bank was not authorized to pledge the collateral required by the Federal law for deposits of Postal Savings Funds, it erred in not holding and determining that the said bank in accepting such deposits held them in trust for the defendants as a trustee *ex maleficio*, and that the defendants as trustees of the Postal Savings System were entitled to a preference as creditors of said bank and to a lien on the collateral decreed to be returned.

The pertinent statutes are set forth in the Appendix (p. 47).

Under the Assignment of Errors we present the following propositions:

PROPOSITIONS

1. A State bank voluntarily becoming a member of the Federal Reserve System is an instrumentality of the Federal government and is subject to its laws as a depository of Federal funds.

2. In any event, if the State bank was not authorized to pledge the collateral required by the Federal law, it held these deposits in trust for the defendants as Trustee *ex maleficio*.

3. The deposits in the State bank were of Federal funds and created a debt to the United States which must be first satisfied by the Receiver.

4. The United States is an indispensable party to this suit.

ARGUMENT

I

A State bank voluntarily becoming a member of the Federal Reserve System is an instrumentality of the Federal Government and is subject to its laws as a depositary of Federal funds

In *Marion v. Sneed*, 291 U. S. 262, the court held that the State of Illinois had not conferred upon its banks the power to pledge assets to secure deposits of political sub-divisions of the State.

It was pointed out, however (p. 269):

A statute confers in terms the power to pledge assets to *secure deposits of the State*, but there is none which so confers the power to pledge assets to secure public deposits of a political sub-division of the State. [Italics supplied.]

There is no State statute expressly conferring the power to pledge assets to secure deposits of Federal funds. Under these circumstances the question arises whether or not (1) the voluntary membership of the Bank in the Federal Reserve System created the Bank such an instrumentality of the Federal government as to make it subject to its laws as a depositary of such funds; or (2) whether

the practice existing among State banks in Illinois for many years prior to the establishment of the Federal Reserve System, and still existing, of securing Postal Savings funds by the deposit of collateral, a practice well known to the officials in charge of State banks and reported to the State Legislature, authorized the pledging of such assets as a necessary incident of deposit banking.

1. The bank was an instrumentality of the Federal Government

The record discloses, as shown in the statement of the case, that on January 16, 1920, the State bank, whose funds are involved herein, became a member of the Federal Reserve System and continued as such until it was suspended.

In *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, 258, it is declared that

The duty of the Secretary to demand a pledge authorizes a national bank to make it.

See also *O'Connor v. Rhodes*, 65 App. D. C. 21, 26.

Here the duty of the Trustees of the Postal Savings System to demand pledges of State banks members of the Federal Reserve System, as shown by the following statutes, authorizes such banks to give such pledges.

Title 12, U. S. C. A., Sections 321 to 331, govern the requirements for any bank incorporated under the laws of any State to become a member of the Federal Reserve System. This must be by the voluntary application of the bank for the right to subscribe to the stock of the Federal Reserve Bank

organized within its District, and complying with the rules and regulations of the Federal Reserve Board. Under Sections 324 and 330 all banks admitted to membership are subject to the provisions of the law which relate specifically to member banks.

Section 332 is as follows:

Depositories of public money; financial agents; security required.

All banks or trust companies incorporated by special law or organized under the general laws of any State, which are members of the Federal reserve system, when designated for that purpose by the Secretary of the Treasury, shall be depositories of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositories of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require of the banks and trust companies thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe keeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government. (Dec. 23, 1913, c. 6, Sec. 9, 38 Stat. 259; May 7, 1928, c. 507, 45 Stat. 492.)

The Act establishing Postal Savings depositories is Chapter 20 of 39 U. S. C. A. Sec. 759 provides for the deposit of funds in banks, as follows:

'Deposit of funds in banks; interest; reserve; security; deposits with treasurer of board of trustees. Postal savings funds received under the provisions of this chapter shall be deposited in solvent banks, whether organized under national or State laws, and whether member banks or not of the Federal reserve system, being subject to national or State supervision and examination, and the sums deposited shall bear interest at the rate of not less than $2\frac{1}{4}$ per centum per annum, which rate shall be uniform throughout the United States and Territories thereof; but 5 per centum of such funds shall be withdrawn by the board of trustees and kept with the Treasurer of the United States, who shall be treasurer of the board of trustees, in lawful money as a reserve. The board of trustees shall take from such banks such security in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand.

12 U. S. C. A., Sec. 332, therefore specifically authorizes a State member bank to become a depository of public money and to pledge its assets to secure such deposit; and 39 U. S. C. A., Sec. 759, expressly

directs the Trustees of the Postal Savings System (one of whom is the Secretary of the Treasury) to require security for the deposit of trust funds of the Postal Savings System, whether deposited in State or National Banks.

Thus there is express statutory power conferred by Federal statute upon State member banks to pledge their assets as security for deposits of public money, and like power conferred upon the Trustees to require the pledging of assets by the bank for the deposit of Postal Savings funds.

The one statute expressly makes the State member bank an instrumentality of the Federal government; the other confers upon the Trustees the duty to exact of this instrumentality security for the deposit of trust funds under their contract. The State Bank here for years advertised that it was a "Depository of U. S. Postal Savings System," and "Under government supervision" (Add. to R. p. 47 et seq.).

These statutes clearly differentiate this case from the *Sneeden* case. In this connection, there is no statute in the State of Illinois prohibiting State banks from complying with the Federal law and pledging its assets to secure the deposit of Federal funds. The State of Illinois has by statute specifically authorized State banks to pledge their assets to secure deposits of public moneys of the State, but not of political sub-divisions. The Federal courts have followed the State courts in the construction of the applicable Illinois law to the effect

that that State had not conferred upon its banks the power to pledge assets to secure deposits of political subdivisions of the State.

The State of Illinois is not here asserting the invalidity of the pledge made by the Woodlawn Trust and Savings Bank to secure the deposits of Postal Savings funds in that Bank. The custom and practice of pledging these deposits commenced in 1911 when that Bank applied to the Postal Savings System for a deposit of its funds and continued until it closed in 1932. The State of Illinois did not complain during all these years of the *ultra vires* conduct of its banks.

This situation is comparable to *Casey v. Galli*, 94 U. S. 673. There an action was brought by the Receiver of the New Orleans National Banking Association to enforce the individual liability of the defendant as a stockholder. The declaration averred that on June 3, 1864, the Bank of New Orleans was a banking corporation under the laws of Louisiana, and carried on business as such until July 1, 1871, when under the Act of Congress it became by due proceedings a national banking association under the name of the New Orleans National Banking Association, and carried on business until October 4, 1873, when it failed. After failure, the Comptroller required the plaintiff to enforce the liability of each stockholder to the amount of the par value of his stock at the time of failure.

The defendant filed three pleas, one of which was that there was no such corporation in existence because the Bank had no authority under its charter or from the State of Louisiana to change its organization to that of a national banking Association, and therefore prayed the declaration be quashed. The Court said (p. 678):

The second plea is clearly bad. No authority from the State was necessary to enable the Bank so to change its organization. The option to do that was given by the 44th Section of the Banking Act of Congress. 13 Stat. 112. The power there conferred was ample and its validity cannot be doubted. The Act is silent as to any assent or permission by the State. It was as competent for Congress to authorize the transmutation as to create such institutions originally.

By a parity of reasoning, it would seem that no authority from the State was necessary to enable the Woodlawn Trust and Savings Bank to become an instrumentality of the Federal government as a member of the Federal Reserve System. This power was conferred by the Federal statute.

Casey v. Galli, *supra*, was reviewed by the Supreme Court in *Hopkins Federal Savings & Loan Association v. Cleary*, 296 U. S. 315; 80 L. ed. 251. This was a suit brought to test whether, without the consent and over the protest of the State of Wisconsin, a building and loan association organized

under the laws of that State could be transmuted from a State to a Federal association by virtue of the Federal Home Owners Loan Act.

The Court held that the Act attempting such a conversion was not conditioned upon the consent of the State or compliance with its laws, but that insofar as the Act permitted this conversion in contravention of the laws of the place of creation is an unconstitutional encroachment of the reserved powers of the States under the 10th Amendment.

The Court distinguished *Casey v. Galli, supra*, by pointing out that in that case the State did not oppose the conversion, though it was not shown it consented; that the reorganized corporation did business for more than two years; that in sustaining the demurrer filed to the declaration to recover the par value of the stock, the Court stated the following grounds:

(a) The defendant was estopped from contesting the validity of the charge after standing by for over two years without making his objection; (b) apart from any estoppel

“no authority from the State was necessary to enable the bank so to change its organization” (p. 678). “The Act is silent as to any assent or permission by the State. It was as competent for Congress to authorize the transmutation as to create such institutions originally” (p. 342).

Justice Cardozo then holds that no question of constitutional power was in the case, but the validity of the Act was taken for granted, which assumption could hardly be avoided when the controversy was viewed in the light of the fact that Louisiana, like the defendant stockholder, had apparently acquiesced in the attempt of the central government to take over the State Banks.

The time had gone by to vindicate her majesty. What she might have done if she had been vigilant is a question not before us. Distinctions may conceivably exist between the power of Congress in respect of banks of issue and deposit and its power in respect of associations to encourage industry and thrift (p. 343).

It is reiterated that Illinois acquiesced for 15 years in the action of the Woodlawn Trust and Savings Bank in becoming and remaining an instrumentality of the Federal government, and for 21 years in the practice of pledging its assets as collateral for deposits of postal savings funds.

The power of Congress to employ State corporations with their consent as instrumentalities of the United States is unquestioned. In *Westfall v. United States*, 274 U. S. 256, which was an indictment charging the defendant with aiding and procuring the mis-application of funds of a State member bank of the Federal Reserve System, it was contended that Congress had no power to punish

this offense against the property rights of the State bank, and that the crime resulted in no loss to the Federal Reserve System. In answering these propositions the Court said (p. 259) :

Finally, Congress may employ state corporations with their consent as instrumentalities of the United States, *Clallan County v. United States*, 263 U. S. 341, and may make frauds that impair their efficiency crimes. *United States v. Walter*, 263 U. S. 15.

In *Hiatt v. United States*, 4 Fed. (2d) 374, 377, the President of an Indiana Trust Company was convicted of violating a Federal law while the Company was a member of the Federal Reserve System. It was contended that the charter of the Company did not authorize it to join the Federal Reserve System. As to this the Court said (p. 377) :

If, in the wisdom of Congress, it seemed that the inclusion of State banks and trust companies would contribute to such and other legitimate purposes of the Federal Reserve System, the right to so include them would seem not now open to question. The government may make use of concerns incorporated under State charters. *Lattinette v. City of St. Louis*, 201 F. 676, decided by this Court; *Cherokee Nation v. Kansas Ry. Co.*, 135 U. S. 641; *California v. Pacific R. R. Co.*, 127 U. S. 1. The provision for membership of State banks in the Federal Reserve System is in no sense compulsory. We are of opinion that Congress

was clearly within its constitutional rights in authorizing the admission of State banks and trust companies to the privileges and benefits of member banks in the Federal Reserve System.

The Court further held that the arrangement between the Trust Company and the Federal Reserve System was a business arrangement not made under compulsion, regarded as advantageous by both concerns and was for the advancement and in the interest of the business for which the Trust Company was chartered. The Court then said:

Whether there ever was a time when that arrangement might have been brought in question by the State of Indiana, it is not such an ultra vires act as made the transaction absolutely void, so that the question could be raised collaterally. Whether there might have been a time when the State of Indiana might have raised the question of the right of the Trust Company to become a member of the Federal Reserve System seems now a moot question, because on May 31, 1931, prior to the happening of the matters charged in the indictment, the Indiana legislature passed the Enabling Act (p. 375).

Doherty v. United States, 94 Fed. (2d) 495, followed and approved the *Hiatt* case, *supra*. In the *Doherty* case the defendant was convicted under Federal statutes of embezzlement of funds from a non-member State bank insured under the Federal Deposit Insurance Corporation Act. Upon appeal

he contended that Congress was without power to enact the law providing for the guarantee of deposits, but that this power was reserved to the States. As to this the Court said:

But as Congress had the right to create this corporation and make it a depository of public moneys of the United States and a financial agent of the government, it must be conceded the power to enact such regulatory legislation as it deemed necessary to protect and make effective this government agency. This contention overlooks the rule that where a certain field of activity becomes subject to one of the enumerated federal powers, then the federal government may in that field exercise authority comparable to state police power (p. 497).

It was further contended that the power to enact this legislation was not found among the enumerated powers of Congress. As to this the Court said:

Having the power to create the institution a government instrumentality, it necessarily had the power to adopt such means as it deemed necessary for the protection and preservation of that institution (p. 498).

It was next contended that non-member State banks taking out Federal Deposit Insurance "are not instrumentalities of the Federal government and could not Constitutionally be made such." As to the contention the Court said:

The Supreme Court, in *Westfall v. United States, supra*, has specifically held that "Con-

gress may employ state corporations with their consent as instrumentalities of the United States." In that case, the right of Congress to extend criminal liability to officers of state banks who were members of the Federal Reserve System was challenged (p. 498).

The fact that there was in the *Doherty* case specific authorization by the Nebraska Legislature for banks in that State to accept insurance in the Federal Deposit Insurance corporations, in no way lessens the authority of this case as to the power of Congress to include State banks in the Federal Reserve System or to confer the benefit of Federal Deposit Insurance upon such banks.

See also *Louisville Bridge Commission v. Louisville Trust Company*, 258 Ky. 856; 81 S. W. (2) 894, where it was specifically held that a Kentucky corporation upon becoming a member of the Federal Reserve System, had the power to secure Federal deposits by pledging securities. In this case, however, Kentucky had passed an Act authorizing its banks to become members of the Federal Reserve System.

It is submitted that the Federal statutes having conferred express power upon State member banks of the Federal Reserve System to pledge their assets as security for deposits of public money, and like power upon the Trustees of the Postal Savings System to require the pledging of assets by State banks for the deposit of Postal Savings funds, in the absence of any protest by the State of Illinois,

no
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deposit

the State bank as an instrumentality of the Federal government has authority to pledge its assets to secure the deposit of Federal funds, and such pledges in this case were lawful.

2. The well known practice existing in Illinois for years, and still existing, of pledging assets to secure deposits of postal savings funds in State banks evidences that the power is a necessary incident to the banking business

In the *Pottorff case, supra*, the court asserted (p. 254):

There is no basis for the claim that the power to pledge assets is necessary to deposit banking. The record is barren of evidence that the practice of so pledging assets has ever prevailed among national banks. And the facts of which we take judicial notice indicate that among national banks such action must have been deemed contrary to good banking practice.

The foot note to sustain the latter statement is limited to the practice of pledging assets to secure private deposits, and it is again said (p. 255):

In the case at bar, there is a specific finding that the transaction challenged was the only instance in which this bank had ever pledged assets to secure a private deposit. Surely action cannot be deemed a necessary incident of a business when only a single instance has been found in which it was taken. Moreover, even a practice commonly pursued may not be a necessary one.

In the *Sneeden case, supra* (p. 270) it is said:

Nor is there any evidence that in Illinois such power is necessary in the conduct of the business of deposit banking.

In this case, however, it is shown that deposits at regular intervals for 21 years were made in the State bank and assets pledged to secure such deposits; that this practice still exists among solvent State banks in Illinois (R. 28); that the Woodlawn Trust and Savings Bank was a depository of War Loan funds (Add. to Record, p. 58); that it was a member of the Federal Reserve System; that it advertised itself for years as a "Member Federal Reserve," "Depository for U. S. Postal Savings Funds," and "Under United States Government Supervision" (Add. to Record, p. 47, et seq.).

The Auditor of Public Accounts, the State official supervising State banks in Illinois, reported to the Illinois Legislature in 1911 the deposit of postal savings funds in State banks, and from 1912 to 1933 the Auditor knew that assets of the banks were pledged as security for such deposits (R. 28).

The record in this case, unlike the records in the *Pottorff* and *Sneeden cases, supra*, is replete with evidence of the existing practice—and which has existed for many years—of securing deposits of postal savings funds with pledges of assets. This discloses a public policy approved by the State of Illinois.

This practice has evidently been regarded by State banks, and State officials, as a necessary incident to the deposit banking business in order for State banks to be upon an equality with national banks in competing for deposits, and to further the confidence of the depositing public in State banks who have qualified as "Members of the Federal Reserve System," as "Depositaries of United States Postal Funds" and as being "Under United States Government Supervision." Cf. *Lewis v. Fidelity Co.*, 292 U. S. 559, 564.

II

In any event, if the State bank was not authorized to pledge the collateral required by the Federal law, it held these deposits in trust for the defendants as trustee ex maleficio

As before set out herein, Section 759 of Title 39 U. S. C. A. emphatically directs the Board of Trustees of the Postal Savings System to take from State banks public bonds or other securities necessary to insure the safety and prompt payment of the deposit of the trust funds made by such Trustees. If the Woodlawn Trust and Savings Bank was unauthorized to comply with this statute and pledge its assets as security for such deposits, the case comes squarely within the analysis of *Allen v. United States*, 285 Fed. 678, as made by Chief Justice Groner in *Inland Waterways Corporation*; *United States Shipping Board Merchant Fleet Corporation*; *Harry H. Woodring*,

Secretary of War; et al. v. Cary A. Hardee, Receiver of Commercial National Bank of Washington, D. C., decided October 31, 1938. In this case Chief Justice Groner said:

Counsel for the Corporation rely upon cases like *Allen v. United States*, 285 F. 678. There a postal official had deposited postal funds in a Massachusetts bank, and the bank had failed. The Court of Appeals held that the United States could recover the amount of the deposit from the bank as trustee *ex maleficio*. The theory was that, since the postal funds were public money, the postmaster had no authority to make the deposit and that the bank was prohibited by law from receiving it. The distinction between that case and this is clear. In the *Allen* case the postmaster had no statutory authority to deposit postal money in the particular bank because there was a Government treasurer in Boston designated to receive the money (39 U. S. C. A. 47), and he likewise had no authority because the bank was not an authorized depository (39 U. S. C. A. 46; and see 31 U. S. C. A. 521). In these circumstances the bank, in receiving the funds, took them in violation of that statute on which the Corporation relies in this branch of the case (18 U. S. C. A. 182). The *Allen* case, therefore, presented the situation of a bank's receiving a deposit which it was prohibited by law from receiving from a person prohibited by law from making it.

The language of the Chief Justice aptly fits this case. The Trustees had no authority to make the deposit in the Woodlawn Trust and Savings Bank unless that Bank was authorized to pledge its assets as security for such deposits. In these circumstances the Bank in receiving the funds took them in violation of Section 182, 18 U. S. C. A. Unless the Woodlawn Trust and Savings Bank is an instrumentality of the Federal government authorized to receive these deposits as such and pledge its assets as security therefor, the Bank acquired a deposit which it was prohibited by law from receiving from the Trustees prohibited by law from making such deposits. In such a situation the Trustees could recover the amount of deposit from the Bank as Trustee *ex maleficio*, for the reason that title to such deposits never passed out of the Trustees.

If the Bank was unauthorized to receive these deposits and pledge its security therefor, and the Trustees had no authority to deposit these funds without such security, the funds received by the Bank were not a part of the assets of the Bank. *San Diego Co. v. California National Bank*, 52 Fed. 59. In this case County moneys were deposited in the California National Bank by the County Treasurer and Tax Collector without authority of law. This case is cited with approval in *Davis v. Elmira Savings Bank*, 161 U. S. 275, 289, as follows:

Thus it was said by this court in *Scott v. Armstrong*, 146 U. S. 499, when dealing with

the question of set-off: "The requirement as to ratable dividends is to make them from what belongs to the bank, and that which at the time of the insolvency belongs of right to the debtor does not belong to the bank." So in the case of *San Diego County v. California Nat. Bank*, 52 Fed. Rep. 59, it was decided that the funds received by a national bank, which the party depositing had no authority of law to deposit, were not part of the assets to be "ratably distributed," but must be returned in full to the rightful owner. And, again, in *Massey v. Fisher*, 62 Fed. Rep. 958, which was a case where an endorser paid the amount of a note to a bank and took a receipt, but before he took the note from the bank the bank failed, the substance of the decision was that the money did not belong to the bank, but was held by it in trust; and, of course, in that case it was not part of its assets.

x In *Fiman v. State of South Dakota*, 29 Fed. (2d) 776 (Cir. den. 279 U. S. 841), the State law prohibited the deposit of State funds in banks in excess of a certain amount, and also required sufficient bond as security for such deposits as were allowed by law. The Rural Credit Board deposited in a National Bank a sum in excess of the amount allowed by law and the Bank did not provide the bond. It was held that all of the funds deposited were trust funds belonging to the State, both those within the amount allowed by law and those in excess of that amount.

In *American Surety Company v. Waggoner National Bank*, 83 Fed. (2d) 99, it is said that a bank becomes a Trustee *ex maleficio* by receiving a deposit fraudulently, corruptly, or where the deposit is not only unauthorized but forbidden by statute. Citing *Board of Commissioners v. Strawn*, 157 Fed. 49.

American Surety Co. v. Jackson, 24 Fed. (2d) 768. A statute required that public money should not be taken from custody of the City Treasurer and deposited elsewhere than in some regularly organized bank, nor without a bond to be taken from the bank in such penal sum and with such security as the council or board of trustees might direct and approve sufficient to save the municipality from loss. The bank became insolvent after giving such bond, and the American Surety Company as surety paid the loss sustained and became subrogated to the rights of the city. The Surety Company brought suit against the receiver to recover the amount of the judgment obtained by the city against the plaintiff, one of the theories of the suit being that the money was deposited in violation of the law and the bank thereby became a trustee of the funds so deposited. As to this the court said:

If the city funds were lawfully deposited in the depository bank the relation of debtor and creditor existed between the city and the bank, and it is well settled that neither the city nor those claiming under it can under

such circumstances claim any preference over general creditors. On the other hand, if the deposits were made by the city treasurer in violation of the laws of the State, it is equally well settled that the bank became a trustee, and that the city or those claiming under it may recover from the receiver the amount of the trust fund if less than the amount of cash coming into his hands at the inception of the receivership, unless it is made to appear that some portion of the trust fund had theretofore been paid out or dissipated by the bank. *Spokane County v. First Nat. Bank*, 68 F. 979; *Merchants Nat. Bank v. School Dist. No. 8*, 94 F. 705; *Smith v. Mottley*, 150 F. 266; *Board of Commissioners v. Strawn*, 157 F. 49; *In Re J. M. Acheson Co.*, 179 Fed. 427; *Titlow v. McCormick*, 236 F. 209. We do not understand this rule is controverted. Indeed, it is so firmly established by the decisions of this and other courts that the question is no longer an open one. It seems quite clear to us that the city funds were deposited in violation of the laws of the State. We think the depository Act of 1921 superseded the Act of 1893, *but if it did not* the bond executed in 1917 did not satisfy the requirements of the Act of 1921 (p. 769). [Italics supplied.]

See also *Gulley v. Wisdom*, 69 F. (2) 495, 496. *Webster v. United States F. & G. Co.*, 71 F. (2) 475.

At the closing of the Bank the deposit of the Postal Savings funds aggregated with interest

\$454,793.04 (R. 25). The resources of the Bank were \$4,760,948.22 (Add. to Record, p. 5-6). This \$454,793.04 was a trust fund held by the Bank and its successor for the Trustees of the Postal Savings System.

The Receiver is the actor in this suit. He must prove his right to recover the bonds in the Treasury of the United States, or the proceeds of those bonds sold, also in the Treasury. He can at most only show the right to set off the trust fund in his hands against the trust property in the Treasury. The only showing made by the Receiver is that the State of Illinois did not by its charter or statute, affirmatively authorize the bank to pledge its assets to recover deposits of Federal funds required by Federal law to be thus secured but tacitly consented for 21 years to such pledging. In the last analysis the Bank was Trustee in accepting those funds, and even though the delivery of the assets was unauthorized, in the absence of any other showing the Treasury officials have a right to retain these bonds and their proceeds until restitution is made of the trust funds.

In other words, the appellants can set off the trust funds due to them by the insolvent bank against the trust property in the Treasury of the United States to the credit of the Postal Savings System. At least the cross demands of the parties are of the same quality and may be set off one against the other.

Cf. *Dakin v. Bayly*, 290 U. S. 143, 148.

If the Bank had no authority to pledge the collateral which was delivered to the appellants, nevertheless, being trustee for the appellants' deposits, when and as those trust funds were dissipated by the trustee, the collateral which the trustee delivered to the appellants, to be held in trust, became substituted in equity for the trust funds thus dissipated by the Bank, and the Receiver has shown no equitable right to recover this trust property or its proceeds. Since the appellants have the right to preference treatment of their trust deposits and stand ahead of general depositors, the use of this collateral, as a general asset of the Bank, to liquidate this preference claim cannot be questioned.

Finally, the Postal Savings funds augmented the assets of the Bank by deposits of \$449,889.95 (Add. to Record, p. 6). These deposits were received by the Bank as Trustee *ex maleficio*, and the appellants were entitled to a finding that these were trust deposits with the right at least to trace them into the hands of the Receiver. As long as trust property can be traced and followed, the property into which it has been converted remains subject to the trust; and if a man mixes trust funds with his, the whole will be treated as trust property, except so far as he may be able to distinguish what is his. This doctrine applies in every case of a trust relation, and as well to moneys deposited in bank, and to the debt thereby created, as to every other de-

scription of property. *National Bank v. Insurance Company*, 104 U. S. 54.

In *Schumacher v. Harriett*, 52 Fed. (2nd) 817, 82 A. L. R. 1, 4. Judge Parker, speaking for the Court, said:

And proof that the tort-feasor has mingled the trust funds with his own and made payments thereafter out of the common fund, is, nothing else appearing, a sufficient identification of the remainder of that fund coming into the hands of the receiver, not exceeding the smallest amount the fund contained subsequent to the commingling, as trust property, under the legal presumption that he regarded the law and neither paid out the trust fund nor invested it in other property, but kept it sacred.

And again Judge Parker said:

The doctrine of tracing trust funds has been greatly liberalized in recent years. The old rule was that the right ceased when the property was turned into money and mixed and confounded in a general mass of property of the same description. The modern rule of equity, however, is that, "where the fraudulent depositary so mingles goods which he has obtained by fraud with the mass of like goods of his own, the whole may be seized, or considered as held in trust, until equitable separation of the property of the defrauded party is made. So, advancing one step further, where money thus obtained has gone to swell the aggregate in

the possession of the fraudulent party, it may, under proper proceedings, be segregated in amount from such aggregate sum, and made the subject of a trust, in order to accomplish the ends of justice." Gray, J., in *Quin v. Earle* (C. C.), 95 F. 728, 731. See also *Central National Bank v. Conn. Mut. Life Ins. Co.*, 104 U. S. 54, 26 L. ed. 693; *Knatchbull v. Hallett*, 13 Ch. Div. 696, and notes in 32 Am. St. Rep., at page 123, and L. R. A. 1916C, at page 31.

See, also, *In Re Kautzke Bros.*, 79 Fed. (2d) 98, 102. Having established the trust fund, the lien must be impressed upon the commingled funds unless the receivers who have the laboring oar, can show a dissipation of those funds. *Sculley v. Pacific States S. & L. Co.*, 88 Fed. (2d) 384, 387.

III

The deposits in the State bank were of Federal funds and created a debt to the United States which must be first satisfied by the receiver

The funds deposited in the Woodlawn Trust and Savings Bank are public funds—

a Federal fund to which the government occupies at least the relation of trustee,

O'Connor v. Rhodes, 65 App. D. C. 21, 26—and is—

public moneys in the sense that it is a fund which the United States control and which, through an instrumentality of the United States created by Congress, they disburse.

It is, therefore, clearly moneys which the United States are charged with the duty of conserving.

Richmond, F. & P. R. R. Co. v. McCarl, 61 App. D. C. 290, quoted in the *Rhodes* case, *supra* at p. 26.

Section R. S. 3466 (31 U. S. C. A., Sec. 191) is as follows:

Priority established.—Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Under this statute the United States has a preferred claim against the receivership. This claim was filed by the Director of the Postal Savings System September 19, 1932 (Addition to Record, pp. 39, 40).

The National Banking Act providing for the distribution of the assets of insolvent national banks without preference, has no application to State banks, but as to them, debts due the United States are preferred claims.

Thus, *Cook County Nat. Bank v. United States*, 107 U. S. 445, holding that the claim of the United States for deposits in national banks for which security was not required was on a parity with claims of private creditors, was based upon the requirements of the National Banking Act for equal treatment. As to this it is said in the *Pottorff* case, *supra* (p. 255) :

To permit the pledge would be inconsistent with many provisions of the National Bank Act which are designed to ensure, in case of disaster, uniformity in the treatment of depositors and a ratable distribution of assets. Compare *Davis v. Elmira Savings Bank*, 161 U. S. 275, 290. This policy of equal treatment was held to preclude, in case of a national bank, even the preference under Section 3466 of the Revised Statutes which otherwise is accorded to the United States when its debtor becomes insolvent. *Cook County National Bank v. United States*, 107 U. S. 445.

Without the provisions of the National Banking Act, the preference which is accorded the United States as debtor under R. S. 3466 is necessarily recognized.

If the United States are preferred as creditors of the insolvent State bank, the court will not do a futile thing and require the restitution of the bonds or the payment of the money to the Receiver in order to have the bonds or their proceeds and the money returned.

IV

The United States is an indispensable party to this suit

We are not unmindful that in the suit against the Panama Canal Zone, *Inland Waterways Corporation et al. v. Hardee, Receiver, supra*, the court held that the proceeds of the pledges sought to be recovered in that suit did not belong to the United States and had not been covered into the Treasury; that it belonged to all of the creditors of the Bank ratably, and that it was of no consequence what the United States may or may not do about the deficiency in the Canal Zone Postal funds, if one should exist.

However, with great deference, we again assert that this suit is in essence against the United States. The Treasurer of the United States who holds these bonds, holds them by virtue of the fact that he is Treasurer of the United States and that these bonds were deposited to secure the United States from loss in the deposit of Postal Savings funds. The certificate issued to the depositor (Add. to Record, p. 69) contains the following:

POSTAL SAVINGS SYSTEM

The Faith of The

UNITED STATES OF AMERICA

Is Solemnly Pledged To the Payment of Deposits
With Accrued Interest

The receipts given by the Treasurer of the United States for the securities deposited with him

by the State Bank, the securities claimed herein, state that these—

are held by the Treasurer of the United States as security for the safekeeping and prompt payment by that bank of all postal savings funds that have been or may be deposited with it, and for the faithful performance of its duties as *a postal savings depository of the United States* (R. 26).

The proceeds of the collateral sold is in the Treasury of the United States.

These facts clearly distinguish this case from those cases involved in *Inland Waterways Corporation et al. v. Hardee, Receiver, supra*, and bring this case within the decision of this Court in *Haskins Bros. & Co. v. Morgenthau*, 66 App D. C. 178. That was a suit against the Secretary of the Treasury, the Treasurer and the Comptroller General in their official capacities to compel return of process taxes which had been collected on coconut oil imported from the Philippines. It was alleged that the taxes were unconstitutional and that the fund comprised a trust fund which was held by the Treasurer of the United States for the appellant and others similarly situated whose unlawful tax payments created it, and who should be permitted to recover it in proportion to their several contributions. In discussing this question and holding that the suit was in essence against the United States, the Chief Justice among other things said it was axiomatic (p. 182):

Third, that the Secretary of the Treasury and the Treasurer are officers of the United States holding offices established by law; that their duties are to receive and preserve the public money and not to disburse it except conformably to law; that as officers of the United States they have no right or estate in the public money or any other money in the treasury, whether earmarked as a special fund or as part of the general fund of the United States; that they are in effect mandataries of a limited and defined commission.

In discussing the allegation of the bill of complaint in the case that the fund belonged to the plaintiffs and those similarly situated, this Court said that this was of no consequence because—

It is not in the hands of the officers but in the treasury, and though earmarked as a special or trust fund, has been mingled with the moneys of the United States (p. 182).

The proceeds of the collateral here sold is in the treasury, even if earmarked as a special fund for Postal Savings System. The bonds are held for security for funds deposited in a United States depository. The officers have no right or estate in the bonds. Both are in the United States, and the United States cannot be coerced through their officers to restore these bonds or pay out this money.

It would seem to follow, too, that if the State bank was constituted a Postal Savings *depository of the*

United States, the United States is a necessary party to any suit involving these Postal Savings.

In addition to this, employees under the Postal Savings System are paid out of the general revenues of the Post Office Department and the Division of Postal Savings in the Post Office Department is just as much an instrumentality of the United States as the rest of the Post Office Department. The Postal Savings System of the United States is just as much a part of the sovereign activity of the United States as any other function of the Post Office Department, and any loss in the Postal Savings Service falls as directly upon the United States as any other loss of the Post Office Department.

There is nothing in the Act providing for Postal Savings depositaries which authorizes any suit against the Trustees of the Postal Savings System. In this connection the case of *Bell-Dowlen Mills v. Draper*, 83 S. W. (2) 247, 248, is in point. There, bill was filed by judgment creditor to reach a deposit of the defendant in the United States Postal Savings System amounting to \$1,495.00 in the Springfield, Tennessee, Post Office. The trial court awarded a decree for the amount of the judgments but declared he was without jurisdiction to go further, and dismissed the bill as to the other relief sought. In holding that the deposits were not subject to the satisfaction of the decree, the Supreme Court of Tennessee said:

It is conceded that the Postal Savings Depository System is an agency of the United

States Government and it is conceded that compulsory process cannot issue from a Tennessee Court to subject defendant's deposit to the satisfaction of the decree herein. The Acts of Congress creating this Federal instrumentality contain nothing authorizing suits against it. U. S. C. A., Title 39, Secs. 751-769 (39 U. S. C. A. 751-769).

And again (p. 249):

If Postal Savings Depositary System were not a governmental agency, the courts of Tennessee would subject this deposit made by the defendant in the Springfield office to the complainant's decree. The complainant would have a lien on such deposit from the date of filing its bill.

No decree for the return of the pledged securities, nor for the payment of the proceeds of those securities which have been covered into the Treasury of the United States, can be entered in its absence.

No citation of authorities is needed on the proposition that right of an absent party may not be adjudicated in its absence.

The relation of indispensable parties to the suit must be such that no decree can be entered in the case which will do justice to the parties before the court without injuriously affecting the rights of absent parties.

United Shoe Mach. Co. v. U. S., 258 U. S. 451, 456.

See also *Shields v. Barrow*, 17 How. 130, 139; *Minnesota v. Northern Securities Co.*, 184 U. S. 199,

235; *New Mexico v. Lane*, 243 U. S. 52; and *Commonwealth Trust Co. v. Smith*, 266 U. S. 152.

We therefore say that the United States is an indispensable party.

And, for the same reasons, we say that the suit is in essence one against the United States, which has not consented to be sued in such a proceeding as this.

That the United States is not named on the record as a party is true. But the question whether it is in legal effect a party to the controversy is not always determined by the fact that it is not named as a party on the record, but by the effect of the judgment or decree which can here be rendered. *Minnesota v. Hitchcock*, 185 U. S. 373, 387, 46 L. ed. 954, 962, 22 Sup. Ct. Rep. 650; *Kansas v. United States*, 204 U. S. 331, 333, 51 L. ed. 510, 27 Sup. Ct. Rep. 388.

Louisiana v. McAdoo, 234 U. S. 627, 629.

CONCLUSION

It is respectfully submitted that the Court below erred in entering a decree against these defendants and that that decree should be reversed.

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APPENDIX

Act of June 25, 1910, c. 386, 36 Stat. 816, as amended, Sec. 1 (39 U. S. Code 751):

There shall be a board of trustees for the control, supervision, and administration of the postal savings depository offices designated and established under the provisions of this chapter, and of the funds received as deposits at such postal savings depository offices by virtue thereof. Said board shall consist of the Postmaster General, the Secretary of the Treasury, and the Attorney General, severally, acting *ex officio*, and, except as otherwise provided by section 768 of this title, shall have power to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices.

The board of trustees shall submit a report to Congress at the beginning of each regular session showing by States and Territories (for the preceding fiscal year) the number and names of post offices receiving deposits, the aggregate amount of deposits made therein, the aggregate amount of withdrawals therefrom, the number of depositors in each, the total amount standing to the credit of all depositors at the conclusion of the year, the amount of such deposits at interest, the amount of interest received thereon, the amount of interest paid thereon, the amount of deposits surrendered by depositors for bonds issued by authority of this chapter, and the number and amount of unclaimed

deposits. Also the amount invested in Government securities by the trustees, the amount of extra expense of the Post Office Department and the Postal Service incident to the operation of the postal savings depository system, and all other facts which it may deem pertinent and proper to present.

Sec. 9 (39 U. S. Code 759) :

Postal savings funds received under the provisions of this chapter shall be deposited in solvent banks, whether organized under national or State laws, and whether member banks or not of the Federal reserve system, being subject to national or State supervision and examination, and the sums deposited shall bear interest at the rate of not less than $2\frac{1}{4}$ per centum per annum, which rate shall be uniform throughout the United States and Territories thereof; but 5 per centum of such funds shall be withdrawn by the board of trustees and kept with the Treasurer of the United States, who shall be treasurer of the board of trustees, in lawful money as a reserve. The board of trustees shall take from such banks such security in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand. The funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein (substantially in proportion to the capital and surplus of each such bank) will-

ing to receive such deposits under the terms of this chapter and the regulations made by authority thereof. * * * If at any time the postal savings deposits in any State or Territory shall exceed the amount which the qualified banks therein are willing to receive under the terms of this chapter, and such excess amount is not required to make up the reserve fund of 5 per centum hereinbefore provided for, the board of trustees may invest all or any part of such excess amount in bonds or other securities of the United States. When, in the judgment of the President, the general welfare and interests of the United States so require, the board of trustees may invest all or any part of the postal savings funds, except the reserve fund of 5 per centum herein provided for, in bonds or other securities of the United States. The board of trustees may in its discretion purchase from the holders thereof bonds which have been or may be issued under the provisions of section 760 of this title. Interest and profit accruing from the deposits or investment of postal savings funds shall be applied to the payment of interest due to postal savings depositors, as hereinbefore provided, and the excess thereof, if any, shall be covered into the Treasury of the United States as a part of the postal revenue. Postal savings funds in the treasury of said board shall be subject to disposition as provided in this chapter, and not otherwise. The board of trustees may at any time dispose of bonds held as postal

savings investments and use the proceeds to meet withdrawals of deposits by depositors.

Sec. 15 (39 U. S. Code 765):

All the safeguards provided by law for the protection of public moneys, and all statutes relating to the embezzlement, conversion, improper handling, retention, use, or disposal of postal and money-order funds and the punishments provided for such offenses are hereby extended and made applicable to postal savings depository funds, and all statutes relating to false returns of postal and money-order business, the forgery, counterfeiting, alteration, improper use or handling of postal and money-order blanks, forms, vouchers, accounts, and records, and the dies, plates, and engravings therefor, with the penalties provided in such statutes are hereby extended and made applicable to postal savings depository business, and the forgery, counterfeiting, alteration, improper use or handling of postal savings depository blanks, forms, vouchers, accounts, and records, and the dies, plates, and engravings therefor."

Sec. 16 (39 U. S. Code 766):

The faith of the United States is solemnly pledged to the payment of the deposits made in postal savings depository offices, with accrued interest thereon as herein provided.

31 U. S. C. A., Section 191:

Priority established.—Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satis-

fied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed (R. S., Sec. 3466).

18 U. S. C. A., Section 182.

Banker receiving unauthorized deposit of public money. Every banker, broker, or other person not an authorized depository of public moneys, who shall knowingly receive from any disbursing officer or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or shall use, transfer, convert, appropriate, or apply any portion of the public money for any purpose not described by law; and every president, cashier, teller, director, or other officer of any bank or banking association who shall violate any provision of this section is guilty of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be fined not more than the amount embezzled, or imprisoned not more than ten years, or both (R. S., sec. 5497; Mar. 4, 1909, c. 321, sec. 96, 35 Stat. 1106).

12 U. S. C. A., Sec. 332:

Depositories of public money; financial agents; security required.

All banks or trust companies incorporated by special law or organized under the general laws of any State, which are members of the

Federal reserve system, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require of the banks and trust companies thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe keeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government (Dec. 23, 1913, c. 6, Sec. 9, 38 Stat. 259; May 7, 1928, c. 507, 45 Stat. 492).

39 U. S. C. A., Chapter 20, Sec. ⁷⁵⁹~~795~~:

Deposit of funds in banks; interest; reserve; security; deposits with treasurer of board of trustees. Postal savings funds received under the provisions of this chapter shall be deposited in solvent banks, whether organized under national or State laws, and whether member banks or not of the Federal reserve system, being subject to national or State supervision and examination, and the sums deposited shall bear interest at the rate of not less than $2\frac{1}{4}$ per centum per annum, which rate shall be uniform throughout the United States and Territories thereof; but 5 per centum of such funds shall be withdrawn by the board of trustees and kept with the Treasurer of the United States, who shall be treasurer of the board of trustees, in lawful money as a reserve. The board of trustees shall take from such banks such security

in public bonds or other securities, authorized by Act of Congress or supported by the taxing power, as the board may prescribe, approve, and deem sufficient and necessary to insure the safety and prompt payment of such deposits on demand.

No. 7211 FILED JAN 27 1939

Joseph W. Stewart

In the United States Court of Appeals^{CLERK}
for the District of Columbia

JANUARY TERM, 1939

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND
HOMER S. CUMMINGS AS TRUSTEES OF THE POSTAL
SAVINGS SYSTEM; WILLIAM A. JULIAN AS TREASURER
OF THE UNITED STATES OF AMERICA AND WILLIAM A.
JULIAN AS TREASURER OF THE BOARD OF TRUSTEES OF THE
POSTAL SAVINGS SYSTEM,

Appellants,

vs.

CHARLES H. ALBERS AS RECEIVER OF WOODLAWN TRUST
AND SAVINGS BANK, A CORPORATION,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

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IN THE UNITED STATES COURT OF APPEALS
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JANUARY TERM, 1939

No. 7211

JAMES A. FARLEY, HENRY MORGENTHAU, JR., AND
HOMER S. CUMMINGS AS TRUSTEES OF THE POSTAL
SAVINGS SYSTEM; WILLIAM A. JULIAN AS TREASURER
OF THE UNITED STATES OF AMERICA AND WILLIAM A.
JULIAN AS TREASURER OF THE BOARD OF TRUSTEES OF THE
POSTAL SAVINGS SYSTEM,

Appellants,

vs.

CHARLES H. ALBERS AS RECEIVER OF WOODLAWN TRUST
AND SAVINGS BANK, A CORPORATION,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

Brief for Appellee.

The statement of the case, as set forth in Appellants' Brief, is, in general, fair and accurate, but Appellee desires to supplement that statement with additional matters which Appellee believes the court should consider in determining the legal questions presented by Appellants,

and this statement of additional matters will also serve to correct any inaccuracies in Appellants' statement of the case resulting from the brevity of that statement.

ADDITIONAL STATEMENT OF THE CASE.

This suit was brought against James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, as Trustees of the Postal Savings System, William A. Julian, as Treasurer of the United States of America, and William A. Julian, as Treasurer of the Board of Trustees of the Postal Savings System (R. 1-2). The decree ordered William A. Julian, as Treasurer of the United States, to turn over and deliver to Appellee certain bonds which had been pledged with him or his predecessors in office to secure the deposit of Postal Savings funds to the credit of the Trustees of the Postal Savings System in the bank formerly operated by the Woodlawn Trust and Savings Bank (R. 31-33), and ordered and directed James A. Farley, Henry Morgenthau, Jr., and Homer S. Cummings, as Trustees of the Postal Savings System, to pay, or cause to be paid to Appellee, out of Postal Savings funds in their possession or under their control, \$106,657.96 on account of moneys received by the Trustees of the Postal Savings System or credited to their account by the Treasurer of the United States since June 22, 1932, and any additional moneys which have since April 6, 1938, been received or which should after the entry of the decree be received by or credited to the account of said Trustees, for or on account of the principal of and interest on bonds pledged by the Woodlawn Trust and Savings Bank with the Treasurer of the United States to secure the deposit of Postal Savings funds in the bank formerly operated by the Woodlawn Trust and Savings Bank, provided that, simultaneously with such payment, Appellee shall pay to

the Trustees of the Postal Savings System the amount of such dividends as have accrued or may accrue to and be payable to said Trustees as general creditors of the Woodlawn Trust and Savings Bank (R. 33-34).

The Woodlawn Trust and Savings Bank was organized April 27, 1905, under the banking laws of the State of Illinois (R. 22), and operated as a state bank in the City of Chicago until June 22, 1932, when it was closed by the Auditor of Public Accounts of the State of Illinois, who thereupon took control of said bank and thereafter, on July 1, 1932, appointed H. C. Vernon to act as Receiver thereof (R. 22). On January 13, 1934, Vernon resigned as Receiver, and the Auditor of Public Accounts appointed William L. O'Connell, the original plaintiff herein, as the successor Receiver of said bank (R. 22). O'Connell died on July 24, 1936, and thereupon the Auditor of Public Accounts appointed Charles H. Albers, the Appellee herein, successor Receiver of said bank (R. 21).

(The Trustees of the Postal Savings System will hereinafter sometimes be referred to merely as the Trustees, and the Treasurer of the United States will hereinafter sometimes be referred to merely as the Treasurer.)

From time to time, subsequent to December 12, 1911, until the closing of the Woodlawn bank on June 22, 1932, Postal Savings funds were deposited in said bank to the credit of the Trustees, to secure the repayment of which funds the Woodlawn bank turned over and delivered to the Treasurer various bonds which were part of the assets of the Woodlawn bank, among which were the bonds in question in this case (R. 22).

Pursuant to the powers conferred upon the Trustees by the Act of Congress creating the Postal Savings System, the Trustees promulgated and issued regulations for

the guidance of qualified banks and others concerned (Add. R. 12). By those regulations, the Third Assistant Postmaster General is constituted the agent of the Trustees, and in fact acts as such agent, for all purposes connected with the qualifications of depository banks, the fixing of the amounts of securities to be deposited and withdrawn by such banks and the conditions of such deposits and withdrawals, the deposit of Postal Savings funds to the credit of the Trustees and the withdrawal and transfer of such funds, the authorization of the sale of securities of banks which fail or decline to repay deposits on demand, the purchase of postal savings bonds for depositors, and the repurchase of such bonds for the purpose of maintaining their parity (R. 25-26).

The regulations also contain the following provisions (Add. R. 17-18):

"Bonds or securities conforming to the requirements of section 8 and in the amount specified in the notification of the Third Assistant Postmaster General shall be forwarded by the bank directly to the Treasurer of the United States, Washington, D. C.

"Either registered or coupon bonds will be accepted, but all registered bonds shall be registered in the name of 'The Treasurer of the United States, in trust for the Bank, of, as security for postal savings funds.'

"On receipt of notice from the Treasurer of the United States that the securities required of any bank have been received and accepted, the Third Assistant Postmaster General will notify such bank that it has qualified to receive deposits of postal savings funds. He will state the amount fixed as the maximum balance which may be held by such bank, and will instruct the proper postmaster to make deposits therein.

"All postal savings funds are required to be deposited to the credit of the Board of Trustees."

The duties delegated to the Third Assistant Postmaster General, as such agent, by said regulations are performed in the Bureau of the Third Assistant Postmaster General (R. 26).

The funds of the Postal Savings System are received by postmasters from depositors, and the postmasters are required by law either to deposit such funds in banks which have qualified by depositing collateral with the Treasurer or to remit such funds to the central depository post office in the state. When such funds are deposited in a bank, that bank pays interest at the rate of $2\frac{1}{2}$ per cent to the Trustees on such deposits, and the Trustees pay postal savings depositors interest at the rate of 2% on their deposits with the postmasters. The $\frac{1}{2}\%$ difference between the rate of interest received by the Trustees from the banks and the rate of interest allowed postal savings depositors, is called "surplus funds" and becomes a part of the revenues of the Post Office Department, which are used to pay the expenses of the Post Office Department. However, Postal Savings receipts are not available to meet the expenses of the local post office, as are other postal funds, until they reach the Treasury Department, and then only the surplus funds are available for such purpose (R. 26, Add. R. 54-55).

The receipts given by the Treasurer for the securities deposited by the Woodlawn bank to secure the deposit of Postal Savings funds, stated, among other things, that the security or securities specified therein were received by the Treasurer of the United States in trust for the Woodlawn bank, and are held as security, etc. (R. 26, Add. R. 18).

In the biennial reports made by the Auditor of Public Accounts of the State of Illinois to the Governor and

General Assembly of the State subsequent to the report of 1911 and until after the closing of the Woodlawn bank in 1932, no specific reference to Postal Savings deposits appears, such deposits being included in an item designated "Other time deposits" (R. 28).

On September 30, 1937, there were approximately 500 solvent state banks operating in Illinois, of which only 24 had securities pledged to secure deposits of Postal Savings funds (R. 28).

Neither the Appellee nor O'Connell, his immediate predecessor, who was the original plaintiff herein, was a party to any of the correspondence with the Director of the Postal Savings System referred to on page 6 of Appellants' brief and more fully shown on page 27 of the transcript of record.

The court made findings of fact (R. 21-29), and none of those facts has been controverted by any of the parties. We therefore refer the Court to those findings of fact for a more complete statement of the facts than is contained in Appellants' brief, as supplemented by this statement, instead of burdening this brief with a repetition thereof.

Propositions.

The propositions relied upon by Appellants for reversal are, in some instances, presented in inverse order and are so intermingled with each other that a proper consideration thereof requires us to answer them in a different order and sequence. It will also be found that the authorities cited in this brief, as well as in Appellants' brief, in support of one proposition are also in some instances applicable to other propositions and must be so considered in order to avoid repetition so far as possible.

In answer to the propositions relied upon by Appellants for reversal, we submit the following propositions:

1. The pledging of assets by the Woodlawn Trust and Savings Bank to secure deposits of Postal Savings funds in that bank was *ultra vires*, contrary to the public policy of the State of Illinois, and void.

2. Postal Savings funds do not belong to the United States, and the deposit of such funds in a bank does not create a debt to the United States.

3. Neither the Act creating the Federal Reserve System nor the Act creating the Postal Savings System conferred power on the Woodlawn Trust and Savings Bank to pledge assets to secure deposits of Postal Savings funds.

4. Under the pleadings and evidence in this case, appellants are not entitled to withhold the pledged assets on the claim that the deposits of Postal Savings funds in the Woodlawn Bank constituted the bank a trustee *ex maleficio*.

5. The United States is not an indispensable party to this suit.

ARGUMENT.

I.

The pledging of assets by the Woodlawn Trust and Savings Bank to secure deposits of Postal Savings funds in that bank was ultra vires, contrary to the public policy of the State of Illinois, and void.

On page 13 of their brief, Appellants concede that in *Marion v. Sneed*, 291 U. S. 262, the court held that the State of Illinois had not conferred upon its banks the power to pledge assets to secure deposits of political subdivisions of the State, and that there is no State statute expressly conferring the power to pledge assets to secure deposits of Federal funds. However, on pages 26-28 of their brief, Appellants contend that there has been for 21 years a well known practice in Illinois of pledging assets to secure deposits of Postal Savings funds in state banks, and say that such practice evidences that the power is a necessary incident to the banking business and discloses a public policy approved by the State of Illinois.

In the *Sneed* case, *supra*, the United States Supreme Court adopted the conclusion reached by the Circuit Court of Appeals, Seventh Circuit, in *Sneed v. City of Marion, Ill.*, 64 F. (2d) 721, that the State of Illinois had not conferred upon its banks the power to pledge assets to secure deposits of political subdivisions of the State, but said (p. 271) that an authoritative determination of the question could be given only by the highest court of the State.

Thereafter the Supreme Court of Illinois (being the highest court of the State), in *People v. Wiersema State*

Bank, 361 Ill. 75, 197 N. E. 537, held, in substance, that, except as to certain deposits hereinafter mentioned, banks incorporated under the laws of the State of Illinois since 1887 have not had any power to pledge assets to secure deposits, and that such pledging was *ultra vires*, against the public policy of the State of Illinois, and void.

In the *Wiersema* case, the bank had pledged assets to secure the deposit of a park district. The court held that the pledged assets must be returned to the receiver of the bank for administration by the receiver. The court held that under the general Banking Act enacted in 1887, as subsequently revised and amended, a state bank authorized to do a general banking business was not thereby authorized to pledge assets to secure deposits. The court referred to an act passed in 1919 which authorized state banks to pledge assets to secure deposits of moneys in the State treasury, and to an amendment of the Banking Act adopted in 1929 which authorized state banks to pledge assets to secure deposits by receivers of state banks, which constituted the only exceptions to the general rule prior to the closing of the Woodlawn bank. Later, two other exceptions were authorized by the legislature, viz., deposits by State officers and other arms and agencies of the State government receiving moneys for and on behalf of the State, and deposits by the Chicago Park District. The court said (197 N. E. 543):

“There is nothing in the language granting the power to do a general banking business indicating that the Legislature meant to include any powers other than those usually understood as embraced within the term. We therefore cannot say that the public policy of this state, as declared by the Constitution and legislative enactments, approves a general pledge of assets by a bank to secure deposits. In this conclusion we are sustained by *City of Marion v. Sneed*, 291 U. S. 262, * * *.”

The court further said (197 N. E. 545):

“To permit such pledges would be inconsistent with many provisions of the Banking Act which are designed to insure, in case of disaster, uniformity in the treatment of depositors and a ratable distribution of the assets. In consonance with the holdings of a majority of the courts of last resort in this country, we are of the opinion that the general practice of pledging assets by banks to secure deposits is not only unnecessary, but is dangerous to the general welfare and is against public policy.”

The court also held that the receiver was not required to pay the amount of the deposit in order to recover the pledged assets (197 N. E. 545).

The decision in the *Wiersema* case was followed by the Supreme Court of Illinois in *People v. Cairo-Alexander Bank*, 363 Ill. 589, 2 N. E. (2d) 889, the court saying, with reference to the *Wiersema* case (2 N. E. (2d) 890):

“In that case we held that neither the General Banking Act nor any subsequent legislation shows any intention to confer power on banks generally to pledge assets to secure deposits; that banks have only such powers as are expressly granted and necessarily implied from specific grants; and that every power not clearly granted must be regarded as withheld and prohibited. In that case we held the contract of pledge to be *ultra vires*, entirely contrary to the public policy of our state as embodied in its Constitution and statutes and totally unenforceable.”

Thereafter, the Circuit Court of Appeals, Seventh Circuit, in *Granzow v. Village of Lyons*, 89 F. (2d) 83, with reference to the pledging of assets by a national bank, located in Illinois, to secure a deposit of municipal funds, said (p. 85):

“Under the authorities cited, the pledge was *ultra vires*. This proposition the receiver has a right to

assert. Nor is the receiver required to make restitution by paying the claim in full. The pledge fails because illegal and void and the creditor becomes entitled only to a dividend as a general creditor. *Texas & Pacific R. Co. v. Pottorff*, 291 U. S. 245, * * *."

In *Fidelity & Casualty Co. of New York v. Allen*, 84 F. (2d) 53, the Circuit Court of Appeals, Seventh Circuit, held that the receiver of a national bank could recover assets which had been pledged by the bank, while doing business in Illinois, to secure the deposit of public funds in the hands of a county collector. The court referred to *People v. Wiersema State Bank*, *supra*, 361 Ill. 75, as "holding directly that state banks in Illinois have no power to pledge assets to secure deposits of funds of political municipalities."

In *O'Connor v. Rhodes*, 65 App. D. C. 21, 79 F. (2d) 146, this court held that a national bank, doing business in the District of Columbia, had no power to pledge assets to secure deposits of the Alien Property Custodian or deposits of the United States Shipping Board M. M. Fleet Corporation, and that such pledging was invalid. In effect, the decision of this court was approved by the Supreme Court of the United States in *U. S. Fleet Corporation v. Rhodes*, 297 U. S. 383.

On October 31, 1938, in *Inland Waterways Corporation, et al. v. Hardee, Receiver of Commercial National Bank of Washington, D. C.* (not yet reported), this court held that a national bank has no authority to pledge its assets to secure deposits otherwise than as Congress has expressly provided, and that the pledging of assets by a national bank, doing business in the District of Columbia, to secure deposits of funds of Inland Waterways Corporation, United States Shipping Board Merchant Fleet Corporation and Panama Canal Zone was beyond the power of the bank and was unlawful and invalid.

Thereafter on December 6, 1938, the Circuit Court of Appeals, Seventh Circuit, in *Henry La Parr, et al. v. City of Rockford, Illinois* (not yet reported), held that national banks, located in Illinois, had no power to pledge assets to secure deposits of municipal funds. The court said:

"It is apparent that the pledge of assets of the bank to secure the deposit of the City was an *ultra vires* act, beyond the legal power of the bank. This follows, in view of the fact that this national bank was located in the State of Illinois, from the decision of the Supreme Court in *City of Marion, et al. v. Sneed*, 291 U. S. 262, affirming the decision of this court in 64 F. (2) 721, holding that banks created under the laws of Illinois do not possess the power of pledging assets to secure the deposit of public money of political subdivisions of the state and that consequently, in view of U. S. C. A., Title 12, Section 90, providing that a national bank may give security for deposits only if the laws of the state wherein it is located authorize banking institutions of the state to do so, a national bank in Illinois has no such power. Following this decision, the Supreme Court of Illinois reached the same conclusion in *People v. Wiersema State Bank*, 361 Ill. 75."

The court then referred to *Granzow v. Village of Lyons*, *supra*, 89 F. (2d) 83, *O'Connor v. Rhodes*, *supra*, 79 F. (2d) 146, *Inland Waterways Corporation, et al. v. Hardee*, *supra*, and other cases, and said:

"It follows, therefore, that the pledge of the assets was illegal; that the action of the receiver and the comptroller in carrying out the pledge agreement, though in good faith, under an erroneous interpretation of the law, was likewise beyond their legal powers.
* * * It is of no moment that the bank and the city, in the original transaction, and the comptroller and the receiver on the one hand and the city on the other, in their transactions, acted in the utmost of good faith.

All of the parties assumed that the pledge was valid. Their assumption was incorrect, but that it was erroneous was not authoritatively established by the Supreme Court until after the payment of the deposit to the city. Immaterial, however, is the motive that inspired the parties, for, under the law, the pledge was invalid, and no act of the bank, the receiver or the comptroller could validate it."

The court further said:

"It is insisted, however, that the acts of the receiver and the comptroller in some way endowed the transaction with validity. That this contention cannot be sustained is apparent from *Marion v. Sneed*, 291 U. S. 262, wherein the court announced that a receiver is not estopped to deny the validity of the pledge; that no rights arise on an *ultra vires* contract, even though it has been performed, and that this conclusion cannot be circumvented by erecting an estoppel which would prevent challenging the legality of a power exercised. The court held that, even though the bank might have been estopped from asserting lack of power, its receiver is free to challenge the validity of the pledge; that an unauthorized pledge reduces the assets available to the general creditors and it is the duty of the receiver to take steps to set aside transactions which wrongfully reduce assets available for creditors, where the corporation does not do so. *Inland Waterways Corp. et al. v. Hardee*, *supra*."

City of Marion v. Sneed, *supra*, 291 U. S. 262, involved the pledging of assets by a bank to secure deposits of public funds. *Texas & Pacific Railway Co. v. Pottorff*, 291 U. S. 245, involved the pledging of assets by a bank to secure private funds. It has therefore been firmly established that a national bank is without power to pledge its assets to secure deposits of either public or private funds unless authorized by Congress so to do; and it is equally well

established that a bank organized under the laws of the State of Illinois is without power to pledge assets to secure deposits of either public or private funds unless authorized by the legislature of the State of Illinois so to do. As hereinabove stated, Appellants concede that there is no statute in Illinois expressly conferring the power to pledge assets to secure deposits of Federal funds, and likewise there is no statute in Illinois expressly conferring the power on state banks to pledge assets to secure deposits of Postal Savings funds, whether those funds be considered Federal funds or private funds. The pledging of assets by the Woodlawn bank to secure deposits of Postal Savings funds was therefore unlawful and void under the statutes of Illinois and the decisions of the courts.

However, as hereinabove stated, Appellants contend that there has been a well known practice in Illinois of pledging assets to secure deposits of Postal Savings funds in state banks, and that such practice evidences that the power is a necessary incident to the banking business and discloses a public policy approved by the State of Illinois.

There is no evidence in the record in this case showing that prior to the closing of the Woodlawn bank there was any such well known practice. The evidence only shows that from reports of examination of the Woodlawn bank made by the bank examiners of the Auditor of Public Accounts of the State of Illinois, the Auditor was on notice and had knowledge that the Woodlawn bank was receiving and had on deposit in its bank Postal Savings funds during the period from 1912 to 1932, and that the Woodlawn bank had assets pledged to secure the repayment of such funds during the period from 1919 to 1932 (R. 28); that in a report made by the Auditor to the Governor and General Assembly of the State of Illinois in 1911, it appeared

that on December 6 of that year Postal Savings funds in the total amount of \$7,189.10 were on deposit in Illinois state banks, of which the sum of \$5,134 was on deposit in Chicago banks (R. 28), but the evidence does not show that said report disclosed the fact that the banks had pledged assets to secure those deposits; that in statements printed by the Woodlawn bank on cards called statement of the bank's condition, in the years 1919, 1921, 1923 and 1924, attention was called to the fact that the bank was a depository for Postal Savings funds (R. 29), but no mention was made of the fact that the bank had pledged assets to secure those deposits; and that on September 30, 1937, almost two years after this suit was commenced, 24 of the 500 solvent state banks then operating in Illinois had securities pledged to secure deposits of Postal Savings funds (R. 28). That evidence falls far short of proving any general custom or practice on the part of Illinois state banks of pledging assets to secure deposits of Postal Savings funds, even if any such custom or practice would be a defense to this suit. The fact that the Auditor of Public Accounts knew that the Woodlawn bank and other state banks in Illinois were pledging, or had pledged, assets to secure deposits of Postal Savings funds could not render valid contracts of pledge which were *ultra vires* and against the public policy of the State, any more than the fact that the Comptroller of the Currency knew that national banks were pledging assets to secure deposits of public funds would render such pledging valid. That such knowledge on the part of the comptroller is of no consequence is shown in *City of Marion v. Sneed*, *supra*, 291 U. S. 262, where the court said (pp. 268-269):

"A national bank could not legally pledge assets to secure funds of a State, or of a political subdivision thereof, prior to the 1930 amendment; and since then it can do so legally only if it is located in a State in

which state banks are so authorized. In some States national banks had, prior to the 1930 amendment, frequently pledged assets to secure public deposits of the State or of a political subdivision thereof; comptrollers of the currency knew that this was being done; and they assumed that the banks had the power so to do. But the assumption was erroneous."

So, in this case, no approval of the Auditor of Public Accounts, and no action or inaction on his part, could validate the *ultra vires* action of state banks in pledging assets to secure deposits of any kind, nor establish any public policy of the State contrary to the public policy as declared by the highest court in the State.

If the power to pledge assets to secure deposits of a particular kind or nature has been conferred upon banks organized under the laws of Illinois, such power must be included in the general power conferred upon state banks to do a general banking business or must have been specifically conferred by some special act of the State legislature. There is no State statute expressly conferring the power to pledge assets to secure deposits of Federal funds or to secure deposits of Postal Savings funds. Therefore, unless the power to pledge assets to secure Postal Savings funds is included in the power to do a general banking business, such power does not exist. When the Illinois legislature, in 1887, conferred upon state banks the power to do a general banking business, it necessarily conferred upon the state banks the right to do only such acts as were then customarily exercised by corporations or persons engaged in the general banking business. There is no evidence in this record that prior to 1887 banks pledged assets to secure deposits, and the United States Supreme Court in *Texas & Pacific Ry. v. Pottorff*, *supra*, 291 U. S. 245, and in *City of Marion v. Sneed*, *supra*, 291 U. S. 262, and the Illinois Supreme

Court in *People v. Wiersema State Bank, supra*, 361 Ill. 75, held that the power to pledge assets to secure deposits is not necessary to the exercise of the power to do a general banking business. In the *Wiersema* case, the Illinois Supreme Court said that "there is nothing in the language granting the power to do a general banking business indicating that the Legislature meant to include any power other than those usually understood or embraced within the term." What was usually understood or embraced within the term "general banking business" must relate to the time when the banking act was adopted in 1887—not what may have been understood or embraced within the term many years after the passage of the act. Otherwise, custom or general practice could confer on corporations powers which the legislature never intended to confer and could make acts valid which were invalid and against the public policy of the State when the law conferring powers on banks was enacted. Such is not the effect of custom, usage or general practice, as hereinafter shown.

The contention of Appellants that the power to pledge assets to secure deposits of Postal Savings funds is a necessary incident to the banking business is wholly inconsistent with the decisions of the United States Supreme Court and decisions of the Supreme Court of Illinois. Such contention could as well be made with reference to the pledging of assets to secure deposits of political subdivisions of the State, but the power of banks, in Illinois, either national or state, to pledge assets to secure such deposits has been denied in every case in which the question has arisen. The public policy of the State, as announced in *People v. Wiersema State Bank, supra*, 361 Ill. 75, as hereinabove stated, is that, with the exceptions specifically authorized by the statutes of Illinois (which

do not include Postal Savings funds), the pledging of assets by the state banks to secure deposits is unauthorized by law, is contrary to the public policy of the State, and is void.

General practice or custom cannot validate an illegal contract. The only cases in which proof of a general practice or custom is admissible, are cases in which the parties to a contract can legally change obligations which would be imposed upon them by law in the absence of contract.

In Williston on Contracts, Sec. 655, the author says (p. 1890):

“Though usage may work such changes in the rule of law applicable to a situation as the parties themselves might have brought about had they in terms so agreed, it is a general rule that ‘where the incident (which it is sought to annex by proof of usage) is of such a nature that the parties are not themselves competent to introduce it by express stipulation, no such incident can be annexed by the tacit stipulation arising from usage.’ This means that if an express agreement would be either in violation of public policy or forbidden effect by law, an equivalent usage will not help the matter.”

So, in this case, as the parties to the pledge agreement could not have legally contracted that the pledge should be valid, usage or custom cannot give it validity. Thus, in *Fidelity & Deposit Co. of Maryland v. Butler, Receiver*, 130 Ga. 225, 60 S. E. 851, where a guardian and a surety company agreed that no part of the wards' funds should be withdrawn from a bank except upon the joint check of the guardian and the surety, the court held that such arrangement had the effect to surrender in part the custody and control of the wards' funds to another than

the guardian appointed by law, and was contrary to public policy. With reference to a universal custom inconsistent with the law, the court said (60 S. E. 859):

“The plaintiff also endeavored to show that it was the universal custom for surety companies which became sureties on the bond of a guardian to require all funds to be deposited by the guardian to be withdrawn only on the joint check of himself and the surety. If the law is as we have construed it to be, the custom of security companies cannot change it. Custom may sometimes be invoked as entering into a contract or supplying incidents, but not to change the law.”

In *Wolfe v. Texas Co.*, 83 F. (2d) 425, (Cert. den. 299 U. S. 553) the Circuit Court of Appeals, Tenth Circuit, said (p. 431):

“It is well settled that a trade usage which is contrary to a statute or which contravenes public policy is invalid and may not be invoked; but where a rule of law is of a character that the parties may make it inapplicable to their contract by express agreement, they may likewise render it inapplicable by implied agreement or by usage. Many rules of law apply only in the absence of an agreement to the contrary.”

Other cases holding that a custom is of no effect when contrary to a rule of law which the parties are not, by contract, permitted to alter, are *Thompson v. Riggs*, 5 Wall. 663, 680; *Costikyan v. Sloan*, 33 App. D. C. 420, 426; *State National Bank of Lynn v. Beacon Trust Co.* (Mass.) 166 N. E. 837, 839; *Fireman's Fund Ins. Co. v. Williams* (Miss.) 154 So. 545, 547; *O'Connor v. Bankers Trust Co.*, 289 N. Y. S. 252, 270; *Weiss v. First Sav. Bank of Colusa* (Cal.), 82 Pac. (2d) 45, 50; *Young v. McKittick*, 267 Ill. App. 267, 270.

Finally, in *Inland Waterways Corporation, et al. v. Hardee, Receiver of Commercial National Bank of Washington, D. C., supra*, this court, in considering the contention there made that authority for the pledge existed by custom and usage, said:

“This brings us, then, to the question of whether the practice shown to have existed in this case created a custom or usage which legalized the pledge. The answer must be in the negative. While the pledge was made and taken in good faith, it violated the provisions of the National Bank Act designed to secure uniformity in the treatment of depositors. *Texas & Pacific Ry. v. Pottorff, supra*. Since the bank was without power to pledge its assets to secure deposits, the pledge was absolutely invalid, and the length of time of the pledge and the good faith of the transaction cannot give it validity. *City of Fort Worth v. McCamey*, 93 F. (2d) 964; *Leonard v. Gage, et al.*, 94 F. (2d) 19. Nor can custom create a valid contract where the power to make it is nonexistent.”

It necessarily follows that neither the knowledge of the Auditor of Public Accounts of the State of Illinois that the Woodlawn bank and some other state banks in Illinois, subsequent to the establishment of the Postal Savings System in 1910, pledged assets to secure deposits of Postal Savings funds, nor even his approval of such pledging under the belief that the same was valid, nor any practice by Illinois state banks of pledging assets to secure such deposits, nor any advertising by an Illinois state bank that it was a depository of Postal Savings funds, could render valid the pledging of assets to secure Postal Savings deposits, or constitute any defense to an action by the receiver of the bank to recover assets pledged by an Illinois state bank to secure deposits of Postal Savings funds.

II.

Postal Savings funds do not belong to the United States, and the deposit of such funds in a bank does not create a debt to the United States.

Appellants' third proposition, set forth on page 37 of their brief, is that the deposits of Postal Savings funds in the Woodlawn bank were deposits of Federal funds and created a debt to the United States. Under that proposition Appellants refer to Section R. S. 3466 (31 U. S. C. A., Sec. 191) which provides that whenever any person indebted to the United States is insolvent, etc., the debts due to the United States shall be first satisfied, and argue that in this case it would be futile to require restitution of the bonds or the payment of money to the receiver if the United States are preferred as creditors of the bank. The deposits in the bank were not made to the credit of the United States, but were made to the credit of the Trustees of the Postal Savings System (R. 22).

On page 38 of their brief, Appellants refer to a claim filed by the Director of the Postal Savings System as being a preferred claim made by the United States against the receivership, and cite pages 39 and 40 of the Addition to Record to show that such a claim was filed. The correspondence appearing on those pages of the Addition to Record shows that the claim filed against the receivership was neither filed by the United States nor by the Director of the Postal Savings System for or on behalf of the United States. No claim of preference was made on the ground that the debt was due to the United States. On the contrary the claim was filed by the Director as a "claim of the Board of Trustees, Postal Savings Sys-

tem, against the Woodlawn Trust and Savings Bank" (Add. R. 39).

A consideration of the Act of Congress creating the Postal Savings System clearly shows that Postal Savings funds do not belong to the United States, and that the deposit of such funds in a bank does not create a debt to the United States.

The Postal Savings System was established by the Act of June 25, 1910, entitled "An Act to establish postal savings depositories for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes" (U. S. Stat., Second Session, 61st Cong., p. 814). Section 1 of the Act as originally adopted, in so far as material to this case, is set forth in the appendix to this brief (Appendix p. 77). As subsequently amended it appears on pages 46-47 of Appellants' brief. As originally enacted, it provided "that there be, and is hereby, created a board of trustees for the control, supervision, and administration of the postal savings depository offices designated and established under the provisions of this Act, and of the funds received as deposits at such postal savings depository offices by virtue thereof." That section conferred authority on the Trustees to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices. As amended, Section 1 is substantially the same as originally enacted.

Section 3 of the original Act (Appendix p. 77) authorized the board of trustees to designate such post-offices as it might select to be postal savings depository offices, and required such post-offices to receive deposits of funds from the public and to account for and dispose of the

same, according to the provisions of the Act and the regulations made by the Trustees in pursuance thereof. Thereafter, the authority to designate post-offices to be postal savings depository offices was conferred upon the Postmaster General in place of the Trustees (39 U. S. Code, 753).

Sections 4, 5 and 6 of the original Act (now sections 754-756, Title 39, U. S. Code) related to the opening of accounts and the making of deposits in postal savings depositories by any person of the age of ten years or over, and the issuing of pass books by postmasters in which entries of deposits and withdrawals should be made, and the issuance of postal savings stamps in denominations of ten cents in order that amounts smaller than one dollar could be accumulated.

Section 7 of the original Act (Appendix p. 77) provided that interest at the rate of 2 per centum per annum shall be allowed and entered to the credit of each depositor once in each year, but in 1933, after the closing of the Woodlawn bank, that section was amended so as to limit the rate of interest to that lawfully paid on savings deposits under regulations prescribed by the Board of Governors of the Federal Reserve System for member banks of the Federal Reserve System.

Section 8 of the original Act (Appendix p. 78) provided that any depositor may withdraw the whole or any part of the funds deposited to his or her credit, with the accrued interest, upon demand and under such regulations as the Trustees may prescribe, and that withdrawals shall be paid, so far as practicable, from the deposits in the community in which the deposit was made. Later this provision was changed to provide for withdrawals under such regulations as the Postmaster General shall prescribe (39 U. S. Code 758).

Section 9 of the Act (Appendix to Appellants' Brief p. 47, this brief p. 78) provides, in substance, that postal savings funds shall be deposited in solvent banks, and shall bear interest at the rate of not less than $2\frac{1}{4}\%$ per centum, but 5 per centum of such funds shall be withdrawn by the Trustees and kept with the Treasurer of the United States as a reserve. That section further provides that the Trustees shall take from such banks such security as the Trustees may prescribe and deem sufficient to insure the safety and prompt payment of such deposits on demand, and that the funds received at the postal savings depository offices shall be deposited in banks willing to receive such deposits under the terms of the Act of Congress and the regulations made by authority thereof, but if no such bank in any state or territory is willing to receive such deposits on the terms prescribed, then such funds shall be deposited with the treasurer of the board of trustees (meaning the Treasurer of the United States). Section 9 of the Act further provides that such funds may be withdrawn from the treasurer of the board of trustees, and all other postal savings funds may be at any time withdrawn from banks and savings depository offices, for the repayment of postal savings depositors when required for that purpose. It further provides that when, in the judgment of the President, the general welfare and interests of the United States so require, the Trustees may invest all or any part of the postal savings funds, except the reserve fund of 5 per centum, in bonds or other securities of the United States. Section 9 further provides that interest and profit accruing from the deposits or investment of postal savings funds shall be applied to the payment of interest due to postal savings depositors and the excess, if any, shall be covered into the Treasury of the United States as a part of the postal revenue. It further provides that postal savings funds in the treasury of the board shall be subject to disposition as provided in the Act, and not otherwise.

Section 10 of the Act (Appendix p. 79) gives any depositor the right to convert his deposit into United States bonds bearing interest at the rate of $2\frac{1}{2}\%$ per annum if such bonds can then be lawfully issued by the Secretary of the Treasury for any of the purposes specified in Section 10.

Section 12 of the Act (Appendix p. 80) requires postmasters and other officers and employees of the Postal Service to keep postal savings depository funds separate from other funds.

Section 16 of the Act (Appendix to Appellants' Brief p. 49) provides that the faith of the United States is solemnly pledged to the payment of the deposits made in postal savings depository offices, with accrued interest thereon as provided in the Act.

The business authorized by the Act is private in nature, not governmental, and, as hereinafter more fully shown, the United States is not the owner of the funds created by the deposits in the postal savings depository offices or in the banks or held by the Treasurer of the United States as Treasurer of the Board of Trustees.

The Constitution confers no express power upon Congress to create the so-called Postal Savings System, any more than it conferred express power to create the Bank of the United States or national banks or to operate railroads or any other kind of business private in its nature. If Congress has such power, it is necessarily because it is incidental to or implied from some express power granted by the Constitution. Manifestly, the power to create the Postal Savings System is not incidental to nor implied from the power granted Congress by the Constitution to establish post-offices, as the operations of the Postal Savings System do not in the slightest degree relate to any of the

functions of the postal service. If valid, the Act must be sustained on the theory that the Postal Savings System is incidental to and a proper exercise of the power granted Congress by the Constitution to borrow money on the credit of the United States, because aside from the purpose to induce persons of small means to save money and incidentally to receive interest thereon, its only purpose, as shown by the provisions of the Act, is to provide a fund from which the Federal government can borrow money. (39 U. S. Code 759-760).

The Act creating the Postal Savings System and the Board of Trustees was originally passed as an independent act and not as a part of any general act relating to the Postal System, and was entitled "An Act to establish postal savings depositories for depositing savings at interest with the security of the Government for repayment thereof, and for other purposes." The word "postal" was evidently inserted in the title because the facilities of the post-office department, including postmasters and others engaged in the postal service, were made available for the administration of the plan. However, the Act did not purport to make the Postal Savings System a part of the postal service rendered by the Federal government to the public, as in the case of the Postal Money-order System, which the Postmaster General, as such, was authorized to establish and maintain in order to promote public convenience and "to insure greater security in the transfer of money through the mail." (39 U. S. Code 711). On the contrary the Act in question "*created a board of trustees*" for the *control, supervision and administration* of the postal savings depository offices, *and of the funds* received as deposits at such postal savings depository offices. That board is composed of the individuals holding the offices of Postmaster General, Secretary of the Treasury and Attorney General, and the personnel of the board changes as changes occur in the persons holding those offices, but

those officers do not act in their respective governmental capacities of Postmaster General, Secretary of the Treasury and Attorney General in controlling, supervising and administering the postal savings depository offices and the funds received as deposits at such offices, but *in the capacity of trustees*. For whom do they act as trustees? The answer necessarily is, for the persons who deposit money in the postal savings depositories established under the Act, because such depositors are entitled to be repaid out of the funds so deposited or out of the proceeds of any securities in which the funds may be invested, and no part of such funds belongs to the United States, nor can the United States use any of such funds for governmental purposes unless it borrows from the trustees and gives its bonds promising repayment thereof. The only other financial benefit that the United States can ever acquire from the operation of the system is the payment into the Treasury of the United States, as a part of the postal revenue, of the profits, consisting of any excess remaining from the interest received by the trustees upon funds received from depositors after payment or credit of interest by them to the depositors upon their deposits at the rate of 2 per centum per annum. (39 U. S. Code 757, 759). It seems clear that the payment of such excess into the Treasury of the United States, as a part of the postal revenue, is to compensate the United States, at least in part, for the use of the postal facilities furnished by it for the administration of the plan by the Trustees.

In *Annie Leka, Administratrix of the Estate of Mike Mesich v. The United States*, 69 Court of Claims Reports 79, (No. F-138, decided February 10, 1930), in a suit brought against The United States in the Court of Claims to recover postal savings deposits, the court said:

“Before passing to a discussion of the regulations promulgated by the board of trustees to effectuate the purposes enumerated, it may be well to pause

here and note that there was created by this act a trust with named trustees, the deposits to be held as trust funds and to be held within the State or community where the deposit was made, and the withdrawals or repayments to be made at the place of deposit and from deposits within the State or community. Interest was to be paid on the deposits, and as provided in the act interest was collected from the banks on the deposits held by them. No part of the fund, it will be observed, went into the Treasury of the United States or became the property of the United States. It was held in trust separate and apart from the funds of the Government. Such being the case the Secretary of the Treasury has no fund out of which to pay the judgment of this court, as it is not payable out of any Government funds. The debt due on this deposit is not a liability of the United States payable out of its funds. It is payable out of the funds in the hands of the trustees, namely, the funds deposited under the postal savings system, and such regulations as they had promulgated as to withdrawals and conditions of payment."

Inasmuch as the deposit of funds by a depositor in a postal savings depository office does not confer ownership of those funds upon the United States nor create a liability of the United States which can be enforced against it by the depositor in the Court of Claims, it is inconceivable that the deposit of those funds in a bank by a postmaster to the credit of the Trustees is a deposit of funds of the United States or creates a debt due from the bank to the United States. As we have already shown, the Trustees of the Postal Savings System, in whom the title to all such funds necessarily vests, are trustees for the depositors, and not trustees for the United States. The depositors are the beneficiaries of the trust and the equitable owners of the fund. Congress recognized this fact by providing for the loaning of moneys from the fund

by the Trustees to the United States, which is inconsistent with any theory of ownership by the United States, and is inconsistent with the theory that the United States becomes a debtor when a depositor makes a deposit in a postal savings depository office. Section 16 of the Act (Appendix to Appellants' Brief p. 49), which provides that the faith of the United States is solemnly pledged to the payment of deposits made in postal savings depository offices, is wholly inconsistent with the theory that the United States is the owner of the funds so deposited or that the United States becomes the debtor when a deposit is made in a postal savings depository office, because such guaranty would not be necessary, but would be meaningless, if Congress intended that the deposit of funds by a depositor in a postal savings depository office conferred upon the United States ownership of those funds or created a debt due from the United States to such depositor.

The deposits of Postal Savings funds by postmasters in the Woodlawn Trust and Savings Bank were, therefore, not deposits of funds belonging to the United States, and did not create a debt to the United States, either within the meaning of the term "public money," as used in Section 332 of Title 12, U. S. C. A., quoted on page 15 of Appellants' brief, or within the meaning of "debts due to the United States," as used in Section 3466 R. S. (31 U. S. C. A., Sec. 191), quoted on page 38 of Appellants' brief.

Appellants cite *Richmond, F. & P. R. Co. v. McCarl*, 61 App. D. C. 290, and *O'Connor v. Rhodes*, 65 App. D. C. 21, in support of their contention that the deposit of Postal Savings funds in a bank creates a debt to the United States. Neither of those cases support such contention. In the first of those cases, the fund under con-

sideration was the general railroad contingent fund created and maintained by the payment of excess income by railroads to the Interstate Commerce Commission in compliance with an Act of Congress, which provided that the fund should be administered by the Commission in the furtherance of the public interest in railway transportation through loans to carriers. The court said that the excess to be paid to the Commission pursuant to the Act was not a tax, like other taxes, payable into the Treasury of the United States for ordinary governmental use, and that the United States possessed no direct beneficial interest in the fund in the sense in which they control the public revenues, but that the United States, through the instrumentality of the Interstate Commerce Commission, hold it, when and as it is paid, as trustee and upon the trusts named in the Transportation Act. The court then said (62 F. (2d) 206):

“These trusts, as we have seen, authorize the Commission to use it for loans to the weaker carriers or to the purchase of railway equipment and facilities for their benefit. The act provides that the fund shall be under the control of the Commission and be used by that body in accordance with the purposes of the act, and these purposes are clear and explicit. But, while it is payable to the Commission, and the Commission is required to collect it, and while its disbursement is under the supervision of the Commission, the Commission as such acts as an instrumentality of the United States. *It is, as we think and as was stated by the Supreme Court, an appropriation by the United States of a fund which, for the purposes expressed in the act—i. e., public uses—they have the right to pre-empt and control.* It is money, therefore, which the carrier has collected and holds as trustee for the United States, and which the United States have a right to demand and receive likewise as trustee, and though it is not moneys which should, or

may be covered into the Treasury under section 3617, R. S. (title 31, U. S. C. A. sec. 484), or withdrawn therefrom under section 305, R. S. (title 31, U. S. C. A. sec. 147), which two sections relate to the manner in which funds belonging to the United States shall be deposited and withdrawn from the Treasury, and, though the language of the act clearly shows that the fund should not be administered or controlled by the Secretary of the Treasury in the ordinary method relating to public funds, but should be administered by the Interstate Commerce Commission, *the fact remains that the money is payable, if properly due, to the United States, and is subject to such disbursement and control 'for public uses' as Congress may declare.*" (Italics ours.)

The same cannot be said of moneys deposited in postal savings depositories. The United States has no right under the Postal Savings Act to appropriate or pre-empt Postal Savings funds for public uses. The Postal Savings funds are private funds administered by trustees, who act as trustees for the depositors—not as trustees for the United States; the funds involved in the *Richmond Railroad* case were public funds administered for the Federal government by a governmental board. Neither of the Sections above mentioned was involved in that case.

In *O'Connor v. Rhodes, supra*, this court held that national banks could pledge assets to secure funds of insolvent national banks deposited by the Comptroller of the Currency because an Act of Congress specifically required the Comptroller to take security for such funds, and national banks get their powers from Congress. In that case this court said that even though the deposit by the Comptroller be described as private money, it is a federal fund to which the government occupies at least the relation of trustee. However, the United States does not occupy the relation of trustee to Postal Savings funds,

as the Act of Congress establishing the Postal Savings System specifically designated the trustees who should have the control, supervision and administration of the funds received as deposits at postal savings depository offices, and all of the provisions of the Act are inconsistent with the theory that the United States should have possession and control of Postal Savings funds as trustee, or that the deposit of such funds in a bank to the credit of the Trustees of the Postal Savings System should create a debt to the United States.

III.

Neither the act creating the Federal Reserve System nor the act creating the Postal Savings System conferred power on the Woodlawn Trust and Savings Bank to pledge assets to secure deposits of Postal Savings funds.

Beginning on page 13 of their brief, Appellants argue that because the Woodlawn bank voluntarily became a member of the Federal Reserve System on January 16, 1920, and continued as such until it was suspended, it was authorized by the Act of Congress creating the Federal Reserve System and by the Act of Congress creating the Postal Savings System to pledge its assets to secure deposits of Postal Savings funds. That argument wholly ignores the cases discussed under our first proposition which clearly hold that a state bank can exercise only such powers as have been conferred upon it by the laws of the state under which it was organized. The Illinois legislature has never authorized Illinois state banks to become members of the Federal Reserve System, and, therefore, has neither expressly nor by implication authorized them to exercise any powers conferred by Congress upon members of the Federal Reserve System which

are not included in the powers conferred upon such banks by the laws of Illinois.

It is too clear to permit of argument that Congress cannot enlarge the powers of a bank organized under the laws of a state. It is true, as stated by Appellants, that Congress may employ state corporations, with their consent, as instrumentalities of the United States, but when so employed the powers exercised by such corporations must be within the powers granted by the laws of the state.

Thus, in *Pennell v. Home Owners' Loan Corporation*, 21 F. Supp. 497, the District Court, D. Maine, S. D., said (p. 498):

"It was held in *Federal Sugar Refining Company v. United States Sugar Equalization Board*, D. C., 268 F. 575, and amply supported by authorities, that a corporation organized under the laws of a state, although it is incorporated by direction of the President in the exercise of a discretionary power, and is used as a government agency and its stock owned solely by the government, has only the powers conferred and is subject to all the liabilities imposed by the laws of the state, * * *."

In *Fulton v. Lloyds Casualty Co.*, 75 F. (2d) 295 (certiorari denied 295 U. S. 743, 296 U. S. 602), the Circuit Court of Appeals, Sixth Circuit, held that a bank organized under the laws of the State of Ohio was without authority to pledge its assets to surety companies to obtain bonds securing deposits by the United States. In that case it was contended for the United States that the bankruptcy statutes requiring a trustee or referee in bankruptcy to take security for the deposit of bankruptcy funds gave to the bank the power to give such security by pledg-

ing its assets to the surety companies therefor, but the court said (p. 297):

"We think the contention cannot be sustained, because the powers of a state bank cannot be enlarged by the federal law, but are to be measured, as we have stated, by the authority of the statutes of the state under which the bank was organized, and there being nothing in the Ohio statutes which authorized the Standard Trust Bank to pledge its assets to secure the deposit of public funds other than the funds of the state or one of its subdivisions, it was without power or authority to make the pledges as to the funds deposited by the referees and trustees in bankruptcy."

To the same effect is *Federal Land Bank of St. Paul v. Crookston Trust Co.* (Minn.), 230 N. W. 797, 799-800.

In *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, the court said, referring to acts of Congress (p. 257, note 11):

"In some of the legislation, not only national, but state, banks also are made depositaries. It is true that Congress cannot make valid a pledge by a state bank, * * *. It would be the duty of a public officer depositing in a state bank to make sure that it had the power to give the security required by Congress."

In *Sneeden v. City of Marion, Ill.*, 64 F. (2d) 721, in holding that national banks in Illinois could not pledge assets to secure deposits of public funds of a city because state banks were not empowered by the laws of the state to pledge their assets to secure such deposits, the Circuit Court of Appeals, Seventh Circuit, said (p. 723):

"Since 1864 it seems that Congress has assumed the right of national banks to pledge their assets to secure deposits of certain public funds. Appellant, however, contends that those statutes grant additional powers to national banks relative to the respec-

tive funds referred to. This position cannot be maintained because each of the acts, except the one relating to land bank and joint stock land bank deposits, provides for deposits in state as well as in national banks, and of course Congress did not intend to enlarge the powers of state banks."

The court further said (p. 723):

"Illinois corporations have only such powers as the laws of that state have given them. Those powers may be either express or implied, and the latter class is limited to those powers which are reasonably necessary to carry out those of the former class. *People v. Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. 798, 8 L. R. A. 497, 17 Am. St. Rep. 319; *Calumet, etc., Dock Co. v. Conkling*, 273 Ill. 318, 112 N. E. 982, L. R. A. 1917B, 814. In this respect banks are no different from any other corporations."

The situation here is not at all comparable to *Casey v. Galli*, 94 U. S. 673, cited on page 18 of Appellants' brief. In that case the state bank, in effect, abandoned and surrendered its state charter and accepted one from the Federal government. However, there was no recognition of any right on the part of Congress to confer any powers on a corporation while it continued to act as a corporation pursuant to its organization under the laws of the state.

Hopkins Federal Savings & Loan Association v. Cleary, 296 U. S. 315, discussed on pages 19-21 of Appellants' brief, also involved the right of a corporation organized under the laws of a state to abandon and surrender its charter and accept one from the Federal government. The court held that in so far as the Act of Congress purported to authorize such abandonment and surrender in contravention of the laws of the state, the Act was unconstitutional, and distinguished *Casey v. Galli*, *supra*, by saying, in effect, that the constitutional question was not

presented to the court in that case. In fact, the *Hopkins* case is authority for the proposition that an act of Congress conferring powers upon a state bank in contravention of the laws of the place of its creation, is an unconstitutional encroachment upon the reserved powers of the states (p. 335).

Neither do *Westfall v. United States*, 274 U. S. 256, *Hiatt v. United States*, 4 F. (2d) 374, nor *Doherty v. United States*, 94 F. (2d) 495, discussed by Appellants on pages 21-25 of their brief, support Appellants' contention in this case. In the first two cases, the court held that when a state bank voluntarily becomes a member of the Federal Reserve System, the United States may punish acts injurious to the System, although done to a corporation that the state also is entitled to protect. In the *Doherty* case, the court held that Congress had the power to enact a statute imposing a penalty for embezzlement of funds from a state bank insured under the Federal Deposit Insurance Corporation Act. Manifestly, an act of Congress purporting to confer on a state bank powers which, under the laws of the state, are *ultra vires*, against the public policy of the state, and void, is entirely different from an act of Congress imposing penalties on individuals for acts injurious to the bank, when such acts are condemned by both the Federal and state governments, and in no way involve the charter powers of the bank. Moreover, in connection with each of the three cases cited by Appellants, it may also be important to keep in mind that the *Westfall* case involved a bank organized under the laws of Michigan, (*Westfall v. United States*, 20 F. (2d) 604), and that the laws of Michigan conferred upon banks organized under the laws of that state the power "to purchase capital stock in a federal reserve bank, or do any other act required

to be done by a bank to become a member bank under the federal reserve act passed by the sixty-third Congress of the United States, or any amendment thereto", (Michigan Compiled Laws, Annotated Supplement 1922, Cahill); that the *Hiatt* case involved a bank organized under the laws of Indiana, and that the laws of Indiana conferred upon Indiana state banks "the power and authority to purchase and hold, for the purpose of becoming a member of a Federal Reserve Bank so much of the capital stock thereof as will qualify it for membership in such reserve bank, * * * and to have and exercise all powers, not in conflict with the laws of this State, which are conferred upon any such member by the Federal Reserve Act", (*Hiatt v. United States*, 4 F. (2d) 374, 375); and that the *Doherty* case involved a bank organized under the laws of Nebraska, and that the laws of Nebraska conferred upon Nebraska state banks the power and authority to accept insurance in the Federal Deposit Insurance Corporation, and therefore no question could "reasonably be urged that the act complained of usurps or is inconsistent with the power of the state to legislate." (*Doherty v. United States*, 94 F. (2d) 495, 498-499.) As hereinabove stated, the Illinois legislature has never authorized Illinois state banks to become members of the Federal Reserve System, and necessarily, if they are admitted to membership, it must be upon the understanding that their powers are only such as have been conferred upon them by the laws of Illinois.

In fact, the Act creating the Federal Reserve System shows that Congress had no intention of conferring any powers on state banks which those banks did not have under the laws of the state under which they were organized. Thus, Section 322 of Title 12, U. S. C. A., provides that in acting upon an application by a bank for member-

ship in the Federal Reserve System, the Board of Governors shall consider "whether or not the corporate powers exercised are consistent with the provisions of the Act of Congress."

But even Section 332, Title 12, U. S. C. A., (which relates to members of the Federal Reserve System and is reprinted on page 15 of Appellants' brief) does not confer any authority to pledge assets to secure deposits of Postal Savings funds in member banks. Whether Postal Savings funds be regarded as private funds or as Federal funds in the sense that they are funds belonging to an instrumentality of the Federal government, they are not included in the term "public money", as that term is used in Section 332. That section is, in substance, the same as R. S. 5153, 12 U. S. C. A. 90, which was considered by this court in *Inland Waterways Corporation, et al. v. Hardee, Receiver of Commercial National Bank*, decided October 31, 1938, and not yet reported. The term "public money" is used in the same sense in both sections. In the *Inland Waterways* case, this court said that the opinions of the Supreme Court in *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, and *Marion v. Sneed*, 291 U. S. 262, established definitely that R. S. 5153 has limited application to deposits made by the Secretary of the Treasury and cannot be extended to cover all public funds of every sort which may be deposited in a national bank by someone who holds the funds on behalf of the United States. The opinion of this court in *O'Connor v. Rhodes*, 79 F. (2d) 146, on this question is the same as in the *Inland Waterways* case. Both of those cases are supported by the decision of the Supreme Court in *Branch v. United States*, 100 U. S. 673, in which the court held that the public moneys of the United States means moneys belonging to the United States.

In *Coudert, Administrator v. United States*, 175 U. S. 178, the court said that "the public moneys of the United States are the revenues of the United States from all sources, and the gross amount received must first be paid into the Treasury" (P. 182).

In *Marion v. Sneed*, 291 U. S. 262, the Supreme Court specifically held that Rev. Stat. Sec. 5153 did not confer or imply the power to pledge assets to secure public deposits, except those made under the provisions of that section by the Secretary of the Treasury of the United States. (*O'Connor v. Rhodes*, 79 F. (2d) 146, 150.)

Postal Savings funds are not deposited in banks by the Secretary of the Treasury of the United States nor in his behalf. They are not covered into the Treasury of the United States, but the funds deposited in banks are deposited by postmasters to the credit of the Trustees of the Postal Savings System in banks designated by the Third Assistant Postmaster General acting as agent of the Trustees (R. 25-26; Add. R. 17-18). Such funds, therefore, are not included in the term "public money," as that term is used in Section 332, Title 12 U. S. C. A., relating to the deposit of public money in banks and trust companies which are members of the Federal Reserve System.

It follows that the fact that the Woodlawn bank was a member of the Federal Reserve System, whether rightfully or wrongfully, is of no consequence in considering the question of the power of the bank to pledge assets to secure Postal Savings funds.

Not only is Congress without authority to confer the power upon an Illinois state bank to pledge assets to secure deposits of Postal Savings funds, but Congress did not purport to confer any such power by Section 759

of Chapter 20 of 39 U. S. C. A., relating to Postal Savings funds, a portion of which is reprinted on page 16 of Appellants' brief. That portion of the section merely provides, in substance, that Postal Savings funds shall be deposited in solvent national or state banks, whether member banks or not of the Federal Reserve System, and that the board of trustees shall take from such banks such security in public bonds or other securities as the board may prescribe. That part of the section which is not reprinted in Appellants' brief provides, in part, that the funds received at the postal savings depository offices in each city, town, village, and other locality shall be deposited in banks located therein willing to receive such deposits under the terms of Chapter 20 and the regulations made by authority thereof, and that if no such member bank and no other qualified bank exists in any city, town, village or locality, or if none where such deposits are made will receive such deposits on the terms prescribed, then such funds shall be deposited under the terms of Chapter 20 in the bank most convenient to such locality.

As said by the Supreme Court in *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, 257, note 11, it is the duty of a public officer depositing in a state bank to make sure that it has the power to give the security required by Congress. The provisions of Section 759 with reference to depositing Postal Savings funds in banks are so elastic with reference to selecting the banks in which such funds shall be deposited that it cannot be inferred from any of the language in that section that Congress intended to authorize the deposit of Postal Savings funds in any state bank which had no power, under the laws of the state, to pledge its assets to secure the deposit of those funds and where such pledging would be contrary to the public policy of the state. While the duty of the Trustees

to demand a pledge might authorize a national bank to give the pledge, it would not empower a state bank to pledge its assets to secure such deposits.

IV.

Under the pleadings and evidence in this case, Appellants are not entitled to withhold the pledged assets on the claim that the deposits of Postal Savings funds in the Woodlawn bank constituted the bank a trustee *ex maleficio*.

In their answer the defendants pleaded that if the Woodlawn bank was without authority to pledge the securities sought to be recovered, then the receipt of the deposits of the Postal Savings funds by the bank was wrongful and fraudulent; that by so receiving said deposits the bank became a trustee *ex maleficio* of said deposits, and that it is the duty of the plaintiff to return the deposits to the Board of Trustees of the Postal Savings System, and that said return is a condition precedent to the right of return of the securities pledged or the proceeds thereof (R. 19).

Beginning on page 28 of their brief, Appellants argue that if the Woodlawn bank was unauthorized to comply with Section 759 of Title 39 U. S. C. A., by pledging its assets to secure deposits of Postal Savings funds, then the Trustees had no authority to make deposits in that bank, and the bank acquired a deposit which it was prohibited by law from receiving from the Trustees and, therefore, became a trustee *ex maleficio* of the deposits.

A trust *ex maleficio* is a constructive trust—that is, a trust raised by equity for the purpose of working out right and justice, where one party has obtained the legal title

to property by fraud, either actual or constructive. 3 Pomeroy's Equity Jurisprudence (4th ed.), Sec. 1044, 1053; *Angle v. Chicago, St. Paul, Minneapolis and Omaha Railway Company*, 151 U. S. 1, 26-27.

In *Angle v. Chicago, St. Paul, Minneapolis and Omaha Railway Company*, *supra*, the court quoted with approval the following from Pomeroy's Equity Jurisprudence, Sec. 1053:

“ ‘In general, whenever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities, or through any other similar means or under any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never perhaps have had any legal estate therein; * * *. The forms and varieties of these trusts, which are termed *ex maleficio* or *ex delicto*, are practically without limit.’ ”

In *Ashton v. Macqueen*, 361 Ill. 132, 197 N. E. 561, the court said on page 566:

“A trust *ex maleficio* arises out of positive fraud and misconduct, only. There must be some element of intentional misconduct on the part of the alleged trustee. *Ryder v. Ryder*, 244 Ill. 297, 91 N. E. 451; 3 Pomeroy's Eq. Jur. Sec. 1044. No citation of authorities is necessary to support the statement that fraud is not presumed, and statements by way of general conclusions of fraud are not sufficient in a pleading.”

In all of the cases cited under Proposition I of this brief, the claim might have been made that a trust *ex maleficio* arose on the ground that the bank obtained the deposits

because the depositor believed, and by pledging its assets the bank represented, that the pledging of assets by the bank to secure the deposits was valid and enforceable, and the pledge having failed because the bank had no power to pledge its assets to secure the deposits, the bank perpetrated a constructive fraud on the depositor. But in none of those cases did the court hold that the receiver was required to return the deposits in order to recover the illegally pledged assets. On the contrary, in *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 242, the court said (p. 261):

“The receiver may assert the invalidity of the pledge without making restitution by paying the pledgee’s claim in full. The Railway’s argument to the contrary is that when as a result of an *ultra vires* contract one of the parties is enriched at the expense of the other, the law creates an obligation to repay *ex aequo et bono* to the extent of the enrichment. The argument if applicable would not help the Railway. Such claim under the doctrine of unjust enrichment is assimilated to an obligation of contract; and does not, in the absence of an identifiable *res* and a constructive trust based on special circumstances of misconduct, confer a preference over other creditors. The pledge here challenged having failed because illegal, the Railway is entitled only to a dividend as a general creditor.”

Likewise, in *Marion v. Sneed*, 291 U. S. 262, where deposits of public moneys of a city were involved, the court said (p. 272):

“Since the Herrin bank was without power to make the pledge of bonds here in question, its receiver is entitled to recover them unconditionally in order that they may be administered for the benefit of the general creditors of the bank.”

There is no evidence in this case showing, or tending to show, that the Woodlawn bank obtained the deposits of

Postal Savings funds through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of any weakness or necessities of the Trustees of the Postal Savings System or through any similar means or under any other similar circumstances which rendered it any more unconscientious for the bank to retain and enjoy the beneficial interest in the deposits than in the *Pottorff* and *Marion* cases, *supra*.

The Woodlawn bank did everything required by the Act of Congress to become a depository of Postal Savings funds, including the deposit of securities with the Treasurer to secure the deposits of such funds. It is true that the attempt by the bank to pledge its assets was futile, because it was an *ultra vires* act, contrary to the public policy of Illinois, and void, as afterwards held by the Supreme Court of Illinois, but by accepting the deposits of Postal Savings funds under such circumstances, it does not seem that the bank was guilty of actual or constructive fraud within the rules under which equity raises a constructive trust and treats the party guilty of the fraud as a trustee *ex maleficio* of the property he has wrongfully received.

The distinction is clearly pointed out in *Leonard v. Gage*, (C. C. A. 4) 94 F. (2d) 19 (Cert. den. 303 U. S. 653). There the receiver of a state bank deposited funds in national banks, which pledged assets to secure the deposits. The deposits were made under an order of the court having jurisdiction of the state bank receivership which directed that the receivers in making the deposits should require security within certain specified classes. Securities of the classes specified were pledged by the national banks. Later the national banks failed and receivers were appointed. The state bank receivers sold the pledged securities and applied the proceeds in liquidation of the deposit accounts, and the national bank receivers then brought suits

to recover the proceeds of sale. The Circuit Court of Appeals held that the pledges of securities by the national banks to secure the deposit accounts of the state bank receivers were *ultra vires* and for that reason invalid. The state bank receivers claimed that under the court order they were required to take security for the deposits, which fact was known to the national banks, and, therefore, the deposits in the national banks constituted trust funds because the attempted pledging by the national banks was invalid. The court denied the claim, saying (p. 23):

“And we see nothing in the case to justify a finding that there were any circumstances of misconduct which would give rise to constructive trusts with respect to the deposits. This would be a matter for consideration with respect to the rights of the state bank receivers in the funds in the hands of the receivers of the national banks, not with respect to the rights of the latter in the proceeds of the pledged collateral; but, in no aspect of the case, do we find any circumstances of misconduct or grounds for declaring a constructive trust with respect to the deposits. The deposits were made as authorized upon the security specified in the order authorizing them. The relationship of debtor and creditor was created thereby just as the order contemplated. The security for the deposits failed, not because of the misconduct of any one, but because of lack of power in the bank to pledge the securities which the order of court had authorized the receivers to accept. The failure to obtain the security contemplated unquestionably resulted from a mistake of law, just as in the *Pottorff* Case; but, under the authority of that decision, such mistake does not give the one who has suffered from it any better status than that of a general creditor.”

Allen v. United States, 285 F. 678, *Fiman v. State of South Dakota*, 29 F. (2d) 776, and *American Surety Co. v. Jackson*, 24 F. (2d) 768, and the other cases cited by Ap-

pellants in their brief under Proposition II, are distinguishable from this case. The bank in each of those cases received deposits which they were prohibited by law from receiving. There was not an unsuccessful good faith attempt by the bank to qualify as a depository of the particular fund involved in any of those cases, but there was an inexcusable violation by the bank of a prohibitory statute. It is not difficult to understand why a court of equity, in accordance with the rules under which equity raises constructive trusts, would hold that where a bank deliberately violates a prohibitory statute in receiving deposits it becomes a trustee *ex maleficio* of those deposits; but that is not the case now before this court. Here there was no violation by the bank of any statute prohibiting it from receiving the deposits. It delivered to the Treasurer the securities which the Trustees demanded. The fact that the Treasurer is required to return those securities to the receiver of the bank because the Trustees obtained an unlawful preference should not authorize a court of equity to convert the relation of debtor and creditor into one of trustee and *cestui que* trust.

In any event, in order to obtain any relief on the ground that the Woodlawn bank, because of its inability to make a valid pledge of its assets to secure deposits of Postal Savings funds, became a trustee *ex maleficio* of Postal Savings funds deposited in that bank, the burden rested upon Appellants to trace those funds into the hands of the receiver, which they failed to do.

The rule, established even by cases cited by Appellants, is that it is indispensable to the maintenance by a *cestui que* trust of a claim for preferential payment by a receiver out of the estate of an insolvent that clear proof be made that the trust property or its proceeds went into a specific fund or into a specific identified piece of property which

came to the hands of the receiver, and then the claim can be sustained to that fund or property only and only to the extent that the trust property or its proceeds went into it. It is not sufficient to prove that the trust property or its proceeds went into the general assets of the insolvent estate and increased the amount and the value thereof which came to the hands of the receiver. *Fiman v. State of South Dakota* (cited on page 31 of Appellants' brief), 29 F. (2d) 776, 779 (cer. den. 279 U. S. 841); *Gulley v. Wisdom* (cited on page 33 of Appellants' brief), 69 F. (2d) 495, 496. To the same effect is *Empire State Surety Co. v. Carroll County*, (C. C. A. 8) 194 F. 593, 604.

Those cases merely follow the rule adopted by the Supreme Court of the United States and by other federal courts, which is also the rule in Illinois. Thus, in *Hoffman v. Rauch*, 300 U. S. 255, the court said (p. 257):

"Here it is accepted doctrine that when a claim is made for preference against funds held by the receiver of a national bank the burden is upon the claimant to establish his title; he must definitely trace something of value which belonged to him, or the avails therefrom, into the receiver's possession. *Schuyler v. Littlefield*, 232 U. S. 707, 713; *Texas & Pacific Ry. Co. v. Pottorff*, 291 U. S. 245, 261."

In determining whether or not the Trustees are entitled to a preference claim, and to what extent, against the assets of an insolvent Illinois state bank, on the ground that deposits of Postal Savings funds in the bank were trust funds, this court necessarily is governed by the laws of the State of Illinois. *Erie R. Co. v. Tompkins*, 304 U. S. 64; *Ruhlin v. New York Life Ins. Co.*, 304 U. S. 202, 205. Under the laws of Illinois, Appellants would have to meet the following requirements laid down by the Supreme Court of Illinois in the recent case of *People v. State Bank of Maywood*, 354 Ill. 519, 188 N. E. 853:

1. A trust necessarily involves a relationship between two persons with respect to certain property, and unless the claimant shows, in the case, for example, of an insolvent bank, that the receiver has possession of the whole or a part of the property or its proceeds, the claimant does not place himself in a relation to the insolvent's estate which differs from that of an ordinary creditor and, as a consequence, no trust can be declared or enforced (188 N. E. 859).

2. Since the right to reclaim a trust fund is founded on the right of property, and not on the ground of compensation for its loss, the beneficiary must be able to point out the particular property into which the fund has been converted. When he is unable to do so, the trust fails and his claim becomes one for compensation only and stands on the same basis as the claims of general creditors (188 N. E. 859).

3. A receiver of a bank in which a fund impressed with a trust was deposited cannot be required to repay it in preference to the claims of general creditors, unless the trust fund can be identified, or traced into some other specific fund or property (188 N. E. 859).

4. In the case of blended moneys in a bank account reduced by withdrawals from time to time, if at any time during the currency of the mingled account, the withdrawals leave a balance less than the trust money, that fund must be regarded as dissipated except as to this balance, and deposits subsequently added to the account from other sources may not be attributed to the trust fund (188 N. E. 859-860).

5. The fact that a bank is trustee *ex maleficio* of deposits does not subject all the assets of the bank to a prior or preferential charge in favor of the depositor (188 N. E. 860).

6. Until the claimant of a trust fund, created by illegal deposits in a bank, traces or identifies specific assets as the product, in whole or in part, of such deposits or their proceeds, no decree subjecting assets in the hands of the receiver to the trust which arose out of the excess deposits may be entered (188 N. E. 860).

Thereafter, in *John B. Colegrove & Co. State Bank v. Gaupp*, 357 Ill. 499, 192 N. E. 570, the Illinois Supreme Court said (192 N. E. 573):

“The right to reclaim a trust fund is founded on the right of the ownership of the fund on the part of the party claiming the same to have it restored to him by the party having possession of the fund. Such claim is not based upon the relationship of debtor and creditor or tort-feasor but is bottomed solely on ownership. Therefore, to recover as a *cestui que* trust, the owner or beneficiary of the trust property must prove that the alleged trustee has, in fact, the property even though it be in an altered form. Failing in this the trust fails, and the claim, if there is any legal liability therefor, becomes merely one of compensation on the same plane as other general debts of the debtor. *People v. People's State Bank of Maywood*, 354 Ill. 519, 188 N. E. 853.

“The plaintiff in error has failed to establish that the funds in question, or any part thereof, ever came into the hands of the defendant in error, and therefore she is not entitled to have her claim allowed as a preference over common or general creditors.”

In general, the Federal cases are in harmony with the Illinois cases as to the requirements hereinbefore set forth. The requirements in the federal courts are thus stated by the Circuit Court of Appeals, Tenth Circuit, in the recent case of *Queenan v. Mays*, 90 F. (2d) 525, 531:

“Before one claiming a preference over general creditors in the distribution of the assets of an in-

solvent national bank may prevail, several things must appear. First, it must be shown that the transaction giving rise to the claim did not result in the relationship of debtor and creditor, but that the bank assumed an obligation to preserve intact the funds or things deposited and account to the claimant therefor. * * * Second, the proceeds arising from breach of the agreement must be traced to some identifiable thing of value which came into the hands of the receiver; it is not sufficient to prove that the trust property or its proceeds went into the general assets and augmented the amount and value thereof which came into the hands of the receiver. If such proceeds are traced into a fund commingled with like funds of the bank, then it will be presumed that the bank expended its own funds before resorting to the trust funds, and the trust will attach to so much of the fund as remains. The authorities are legion."

As said by the court, the authorities on the question are legion, and it is therefore impractical to refer to all of them. However, the following are representative of the cases sustaining the following propositions:

1. Proof that a fund did come into the bank's possession, that its assets were thereby augmented to that extent and that a trust *ex maleficio* was thereby created in favor of the depositor, is not sufficient to warrant a decree of preferential payment of any part of the fund to the depositor by the receiver of the bank. Before that can be done, it is incumbent on the depositor to prove that the fund, or some part thereof, remained in the possession of the bank until it closed its doors, and that it passed into the hands of the receiver. *Flynn v. Smith* (C. C. A. 7), 90 F. (2d) 305, 310.

2. In order that the claimant of a trust fund may be allowed a preference in a bank receivership, it is necessary to establish (1) that such fund was impressed with a trust

in the claimant's favor, (2) that there was an augmentation of the assets of the bank by receiving the trust fund, and (3) that the augmented assets have been traced into the hands of the receiver. *Flynn v. Smith* (C. C. A. 7), 90 F. (2d) 305, 311.

3. In order to recover from a receiver on the ground that wrongful deposits of funds constituted a bank a trustee *ex maleficio*, it is not sufficient to establish that the bank wrongfully got money and mixed it with its own, but it must also appear that until the receiver got the assets, the fund into which it went has never been reduced below the sum claimed, or if deposited in another bank, was not lost by offset. *Hancock County v. Hancock Nat. Bank of Sparta, Ga.* (C. C. A. 5), 67 F. (2d) 421, 422.

4. In order for the claimant to succeed against the receiver of a bank in tracing funds held by the bank as a trustee *ex maleficio*, it must appear not only that the bank wrongfully got the money, but that the receiver also got it or something representing it. *Hancock County v. Hancock Nat. Bank of Sparta, Ga.* (C. C. A. 5), 67 F. (2d) 421, 422; *Gulley v. Wisdom* (C. C. A. 5), 69 F. (2d) 495, 496.

5. It is not enough to show that at the time of receipt the general assets of the insolvent bank were increased or that debts were discharged. *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, note 19 p. 261; *Schumacher v. Harriett* (C. C. A. 4), 52 F. (2d) 817, 819; *Elmer Co. v. Kemp* (C. C. A. 9), 67 F. (2d) 948, 953; *Gulley v. Wisdom* (C. C. A. 5), 69 F. (2d) 495, 497.

6. It is an exploded notion that a trust fund may be recovered if it can be traced into the general assets of an insolvent estate. *State Bank of Winfield v. Alva Security Bank* (C. C. A. 8), 232 F. 847, 849.

7. In case the bank mingled the trust funds with its own and made payments out of the common fund, only the smallest amount the fund contained subsequent to the commingling can be considered as trust property. *Empire State Surety Co. v. Carroll County* (C. C. A. 8), 194 F. 593, 605; *Schumacher v. Harriett* (C. C. A. 4), 52 F. (2d) 817, 819; *Flynn v. Smith* (C. C. A. 7), 90 F. (2d) 305, 310.

8. If a trust fund can be traced into a single account, like cash or a credit to a single bank, then the trust may be impressed upon the smallest balance that remains in the fund subsequent to the commingling of the trust fund and the closing of the bank. *State Bank of Winfield v. Alva Security Bank* (C. C. A. 8), 232 F. 847, 849; *Schumacher v. Harriett* (C. C. A. 4), 52 F. (2d) 817, 818; *Brennan v. Tillinghast* (C. C. A. 6), 201 F. 609, 613.

9. A trust fund does not lose its character when mingled with other moneys of a bank, but the burden of proof is on the claimant to trace the trust fund, either in its original shape or in a substituted form, into the moneys which came into the hands of the receiver as part of the assets of the bank. *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, note 19 p. 261; *Schumacher v. Harriett* (C. C. A. 4), 52 F. (2d) 817, 819; *Brennan v. Tillinghast* (C. C. A. 6), 201 F. 609, 613; *Gulley v. Wisdom* (C. C. A. 5), 69 F. (2d) 495, 497.

10. The claimant has the burden of proof to establish the trust and then to trace the trust funds into the hands of the receiver. *Elmer Co. v. Kemp* (C. C. A. 9), 67 F. (2d) 948, 952; *Schuyler v. Littlefield*, 232 U. S. 707, 713; *Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, note 19 p. 261.

The foregoing cases are not inconsistent with *National Bank v. Insurance Co.*, 104 U. S. 54, cited on page 36 of

Appellants' brief. In that case the claim considered was not one in receivership, and the rule was stated that if a man mixes trust funds with his own, the whole will be treated as the trust property, except so far as he may be able to distinguish what is his own. That rule applies in an action against a solvent trustee, but not in an action against the receiver of an insolvent trustee to recover a trust fund, as shown by the cases above cited. If the Circuit Court, S. D. California, in *San Diego Co. v. California National Bank*, 52 F. 59 (cited on page 30 of Appellants' brief), intended to extend the rule laid down in *National Bank v. Insurance Co.* to receivership cases, it is apparent from the later cases decided by the Supreme Court of the United States and by the Circuit Courts of Appeals, that the California Circuit Court was wrong. *Davis v. Elmira Savings Bank*, 161 U. S. 275, (cited on page 30 of Appellants' brief), did not involve any trust fund. The question under consideration in that case was a claim for preference under a state statute in a national bank receivership.

In making their argument that the bank was a trustee *ex maleficio*, Appellants are driven to concede, for the purpose of that argument, that the pledging by the bank of the securities sought to be recovered in this suit was illegal and void, because if such pledging had been valid the bank would not have been a trustee *ex maleficio* of the deposits. Both the allegations in the answer and the argument in their brief that the bank was a trustee *ex maleficio* of the Postal Savings funds, are necessarily based upon the premise that the Woodlawn bank was without authority to pledge the securities sought to be recovered.

The case presented by Appellants to this court, under Proposition II of their brief, is therefore as follows: Appellants are withholding from the receiver certain assets

of the bank which were illegally turned over to them by the bank. They attempt to justify such withholding upon the ground that the bank was trustee *ex maleficio* of certain moneys belonging to the Trustees aggregating \$454,793.04 which were illegally turned over to the bank. Necessarily, if Appellants illegally obtained possession of those assets, the receiver is entitled to recover them. (*Texas & Pacific Ry. v. Pottorff*, 291 U. S. 245, 260-261; *Marion v. Sneed*, 291 U. S. 262, 272; *People v. Wiersema State Bank*, 361 Ill. 75, 94, 197 N. E. 537, 545.) Likewise, if the bank received moneys belonging to Appellants which the bank held as a trustee, Appellants would be entitled to recover such part of the trust fund as they can trace into the hands of the receiver, and a court of equity might, upon proper pleadings and adequate proof, require the receiver to pay to Appellants such portion, if any, of the trust fund as was traced into his hands, as a condition precedent to the return of the assets of the bank which are held by Appellants—not as enforcement of the illegal pledge, but in order to prevent a multiplicity of suits and to do equity between the parties.

However, Appellants neither alleged nor proved the essential fact which was necessary to be found by the lower court in order to warrant that court in granting any relief to Appellants in this suit on the ground that the bank was a trustee *ex maleficio* of the money deposited in the bank to the credit of the Trustees. If the transaction constituted the bank as a trustee *ex maleficio*, it was not sufficient merely to show that such deposits were made with the bank, but it was also necessary to allege and prove that all or some part of the trust fund claimed to have been created by the deposits came into the hands of the receiver. No allegation was made in Appellants' answer, and no evidence was offered by Appellants to show, that the alleged

trust fund or any part thereof ever came into the possession of the receiver. A showing that a certain amount of cash came into the hands of the receiver is not sufficient. In order to establish that the trust attached to such cash, proof must be made showing the smallest amount of cash held by the bank between the time of making the deposits and the closing of the bank, and the trust only attaches to that smallest amount. No such proof was made in this case. There was therefore nothing before the lower court which would have authorized it to insert in the decree in this case a provision that as a condition precedent to the return of the illegally pledged securities and their proceeds by Appellants to the receiver, the receiver should pay and deliver to the Trustees any trust fund, belonging to the Trustees, which the bank obtained as a trustee *ex maleficio*.

While relying upon the claim that because the bank was unauthorized to pledge its assets to secure deposits of Postal Savings funds, the bank became a trustee *ex maleficio* of those deposits, Appellants entirely depart from the rules of law applicable to the recovery of trust funds in bank receivership cases, and seem to treat the illegal pledge as a valid pledge for the purpose of securing trust funds, although Appellants claim that the deposits became trust funds only because the pledge was illegal and void. Thus, wholly ignoring the fact that this case involves the rights and obligations of the receiver of an insolvent bank, on page 30 of their brief Appellants say that, under the circumstances shown in this case, the "Trustees could recover the amount of deposit from the Bank as Trustee *ex maleficio*, for the reason that title to such deposits never passed out of the Trustees." That proposition may, for the purpose of this argument, be conceded as true, but it has no application to this case. The question here is not what rights Appellants could have enforced against the bank

itself if the claim had been pressed against the bank while it was solvent, but what rights Appellants have as against the receiver of the bank after insolvency. If suit is brought by a general depositor against a bank while solvent, such depositor is entitled to recover the full amount of his deposit from the bank, but he is not entitled to recover his deposit in full in receivership proceedings unless all other general depositors can be paid in full out of the assets. Likewise, if a solvent bank holds a trust fund which it is not entitled to retain, the beneficiary is entitled to recover the whole trust fund from the bank, but he is entitled to recover from the receiver of an insolvent bank only such part, if any, of the trust fund as he can trace into the hands of the receiver.

Again, on pages 34 and 35 of their brief, Appellants claim a right to set off the alleged trust fund against the illegally pledged assets and their proceeds, and also contend that when and as the alleged trust funds were dissipated by the bank, the illegally pledged assets became substituted in equity for the funds so dissipated. They further say that since they have the right to preference treatment of their trust deposits and stand ahead of general depositors, the use of the collateral, as a general asset of the bank, to liquidate their preference claim cannot be questioned.

Those contentions have already been fully answered in this brief. The right to a set-off implies that each party has a cause of action against the other. Appellee's cause of action is to recover the illegally pledged assets and their proceeds. Appellants' cause of action is to recover from the receiver such part, if any, of any trust fund held for them by the bank which they could show came into the hands of the receiver. They wholly failed to prove that any such trust fund came into the receiver's hands. There-

fore they had no right of set-off against the receiver's claim to the illegally pledged assets.

The claim that the pledged assets secured a trust fund which was dissipated by the bank is, in effect, asserting the validity of the pledge. Appellants have no right to preference treatment of their alleged trust deposits over general creditors. Any such preference would have extended only to such part of the alleged trust deposits traced into the hands of the receiver, and no such tracing was made by Appellants.

In substance, Appellants' argument is that it can obtain the same advantage on account of the illegal pledge that it would have obtained if the pledge had been legal. If successful in this suit, Appellants will obtain an undue advantage and preference over other creditors of the bank solely by reason of the illegal pledge, which has been condemned by the Supreme Court of the United States and by the Supreme Court of Illinois, as shown under Proposition I of this brief.

On page 35 of their brief, Appellants say that they were entitled to a finding that these were trust deposits with the right at least to trace them into the hands of the receiver. Appellants did not request the trial court to make any such finding, nor did the court deprive Appellants of any right to trace the alleged trust deposits into the hands of the receiver. Appellants offered no evidence to trace the alleged trust deposits into the hands of the receiver and consequently the court was not called upon to rule upon the admissibility or weight of any such evidence. Therefore, Appellants were not deprived by the trial court of any right to trace any trust deposits into the hands of the receiver. Evidently Appellants proceeded on the theory of their answer (R. 19) that if, by receiving

the deposits, the bank became a trustee *ex maleficio* of the deposits, the return of the deposits by the receiver was a condition precedent to the right of return to the receiver of the securities pledged or the proceeds thereof, and that it was not incumbent upon the defendants to trace the alleged trust fund into the hands of the receiver. Manifestly, Appellants cannot try their case in the trial court upon one theory, and then complain of the decree on the ground that if they had tried it on another theory, they might have been able to prove facts under which the lower court should have entered a decree different from that which was entered. There is no evidence in this record showing, nor did Appellants make any offer to show, that any of the alleged trust funds came into the hands of the receiver. Appellants have therefore failed to show in this court of review that the trial court committed any error in not granting them affirmative relief which was neither requested by them nor justified by the evidence.

V.

The United States is not an indispensable party to this suit.

Beginning on page 40 of their brief, Appellants contend that this suit is in essence against the United States and that the United States is an indispensable party. Reduced to a concrete statement, Appellants' contention is, that notwithstanding the fact that the Treasurer of the United States, who is also Treasurer of the Board of Trustees of the Postal Savings System (Sec. 759, Title 39, U. S. Code), has in his possession assets of the Woodlawn Trust and Savings Bank which were illegally pledged by the bank to secure the deposit of Postal Savings funds, the receiver of the Woodlawn bank cannot recover those assets, for the use and benefit of the depositors and creditors of

the bank, because in order to do so he must bring a suit, either in form or in essence, against the United States, which suit necessarily cannot be maintained because the United States has not given its consent to be sued in any such case.

Appellants' argument in support of that contention seems to be based upon the following premises: (1) that the faith of the United States is solemnly pledged to the payment of deposits made by depositors in the postal savings depository offices, and, therefore, the United States may sustain loss by the return of the illegally pledged assets and their proceeds to the receiver; (2) that the pledged assets ordered returned to the receiver are held by the Treasurer of the United States; and (3) that the Postal Savings System is an instrumentality of the Federal government, and that Congress has not authorized any suit against the Trustees of the Postal Savings System. It therefore seems most appropriate to answer the contention under three separate subdivisions of the general proposition.

(1)

The fact that the faith of the United States is pledged to the repayment of deposits in postal savings depository offices does not require that the United States be made a party to this suit.

The first observation to be made in support of this proposition is that the deposits in the Woodlawn bank were not made to the credit of the United States, or to any governmental department or officer thereof, but to the credit of the Trustees of the Postal Savings System (R. 22) and as hereinabove shown under Proposition II of this brief, such deposits do not create a debt of the United States.

Appellants refer this court to the certificate issued to the depositors, which is reproduced on page 69 of the Addition to Record. The certificate in that respect is no different from the Act of Congress (Sec. 766, Title 39, U. S. Code). The certificate and the provision of the Act of Congress are merely to the effect that the United States guarantees the repayment of deposits made in postal savings depository offices, with interest accrued thereon. However, the fact that one is a guarantor of debts incurred by another in the operation of his business certainly does not require the guarantor to be made a party to a suit to recover assets illegally pledged to secure the deposit of funds of the debtor in a bank, even though recovery of the assets so illegally pledged may result in the guarantor being ultimately required to pay something under his guaranty. As said in *Annie Leka, Administratrix of the Estate of Mike Mesich v. The United States*, 69 Court of Claims Reports 79, the provision of the Act of Congress creating the Postal Savings System that the faith of the United States is solemnly pledged to the payment of the deposits made in Postal Savings depository offices, with accrued interest, means that the faith of the United States is pledged to make good any deficiency in case there is a deficiency in the funds, but that this does not mean that the United States can be sued by one of the depositors where there is no question about there being sufficient funds on deposit to meet the claim. Nowhere in this record does there appear any evidence showing that if the illegally pledged assets and their proceeds are returned to the receiver of the bank, as required by the decree, there will not remain sufficient funds in the hands of the Trustees of the Postal Savings System to discharge all liabilities to depositors. Therefore this record does not show that the United States is in any way financially affected by the decree in this case.

But even though an obligation of the United States to make good any deficiency in the funds of the Postal Savings System to meet the obligations incurred by the Trustees in the operation of the System might arise by reason of the return to the receiver of the Woodlawn bank of the assets which were illegally pledged to secure deposits of Postal Savings funds in that bank and the repayment of the moneys credited to the Trustees on account of principal and interest received by the Treasurer from pledged assets, still that would not make a suit by the receiver of the bank against the Trustees and the Treasurer to recover the illegally pledged assets and the moneys received from pledged assets, a suit in essence one against the United States or require that the United States be made a party to that suit.

Such obligation would be no greater than that incurred by reason of any loss that might result to the United States in any other kind of transaction in which the United States has an indirect interest. In the recent case decided by this court on October 31, 1938 (*Inland Waterways Corporation, et al. v. Cary A. Hardee, Receiver of National Bank of Washington, D. C.*) this court said, with reference to a suit by the receiver of a bank against the United States Shipping Board Merchant Fleet Corporation to recover a preferential payment made on account of the pledge of assets by the bank to secure deposits of the Fleet Corporation, that even though the United States, indirectly, would sustain loss because of the judgment entered in that case on account of the fact that the United States owned all of the stock of the Fleet Corporation, still the suit against the Fleet Corporation could not be regarded as a suit in which the United States was a necessary party. This court there said:

“We think there is no substance to the contention that this is a suit against the United States. In the

Rhodes case (*O'Connor v. Rhodes*, 79 F. (2d) 146, 65 App. D. C. 21) we denied a similar contention on behalf of the Alien Property Custodian. There is greater reason for denying it in the case of the Corporation for, notwithstanding the deposits consisted of moneys belonging to or in which the United States were interested, the contract itself was the contract of the Corporation; and the fact that the Corporation may not now possess any money nor be able to respond to a money decree against it may, as the Supreme Court said in the *Sloan Shipyards* case, affect the value of the remedy but not defeat the remedy itself. The receiver is not suing the United States but the Corporation."

Again in the same case, where it appeared that assets of a bank were pledged with the Secretary of War to secure the deposit in a bank of money order funds of the Panama Canal Zone, and suit was brought by the bank's receiver against the Secretary of War and the Purchasing Officer of the Panama Canal to recover the proceeds of the assets so illegally pledged, this court said:

"We think the United States are not indispensable parties to this suit and that this is not a suit against the United States. The argument is that the loss which will result from the recovery of the bonds or the proceeds of the bonds will be the loss of the United States because of a moral obligation to repay the holders of deposit money orders, and that, in these circumstances the United States are indispensable parties and have not consented to be sued. In *O'Connor v. Rhodes* we said on this point in the case against the Alien Property Custodian that the suit could not be defeated on the theory that it was one against the United States. We think this was right. If a suit were brought against the Alien Property Custodian for the recovery of seized property and the evidence showed that the Custodian had erroneously turned over the property to another person not entitled thereto, it

would be no defense to say that a judgment against the Custodian would, because of a moral obligation, have to be satisfied ultimately by the United States. *Cf. Becker Steel Company v. Cummings*, 296 U. S. 74. We think the same reasoning applies here. The proceeds of the pledge sought to be recovered in this suit do not belong to the United States and have not been covered into the Treasury. Nor is there any law under which they can be so covered. The money which the Secretary of War has is money of the bank out of which all creditors are entitled to be paid ratably. In these circumstances it is of no consequence what the United States may or may not do about the deficiency in the Canal Zone postal funds, if one should exist. The question is rather, whether there was a valid authorization for the pledge. If there was not and the Secretary of War participated in a conversion of the bank's assets, he must restore the bonds or refund the proceeds from their sale. The pledged bonds or their proceeds are in the hands of the Secretary of War, and the rule which we think the cases cited lay down requires him now to respond to judgment just as any other person who had participated in a preferential transfer would be compelled to respond."

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So, in this case, neither the pledged assets nor the proceeds of pledged assets belong to the United States and have not been covered into the Treasury, nor is there any law under which they can be so covered as funds of the United States. The securities which the Treasurer has are assets of the bank out of which all creditors are entitled to be paid ratably. In these circumstances it is of no consequence what the United States may or may not do about any deficiency in Postal Savings funds, if one should exist. The question is whether there was a valid authorization of the pledge. If there was not, the Treasurer must restore the pledged assets to the receiver of the Woodlawn bank, and the Trustees must refund the proceeds from the

illegally pledged assets which have been credited to their account by the Treasurer.

Appellants say that they are not unmindful that in the *Inland Waterways* case this court held that the proceeds of the pledges sought to be recovered in that suit did not belong to the United States, and that it was of no consequence what the United States may or may not do about the deficiency in the Canal Zone Postal funds, if one should exist, but Appellants, with great deference, again assert that this suit is in essence against the United States. In effect, their contention is that the decision of this court in the *Inland Waterways* case was wrong. We say that the decision of this court in that case was right and in accordance with the decisions of the Federal courts beginning with *U. S. Bank v. Planters' Bank*, 9 Wheat. 904, decided more than 100 years ago. In that case the jurisdiction of the court was challenged in a suit brought against a bank on the ground that the State of Georgia was one of the incorporators and a member of the bank, and that the suit was, therefore, in effect, one against the State of Georgia and could not be maintained because the State was immune from suit. The contention in that case was obviously based on the ground that the State of Georgia would or might sustain some loss if the plaintiff prevailed, but the court said (p. 906):

“A suit against the Planters' Bank of Georgia is no more a suit against the State of Georgia, than against any other individual corporator. The State is not a party, that is, an entire party, in the cause.”

And on page 907 the court further said:

“It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character,

and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. Thus, many States of this Union who have an interest in Banks, are not suable even in their own Courts; yet they never exempt the corporation from being sued."

In that case it is apparent that the enforcement of a judgment against the Planters' Bank would indirectly have affected the finances of the State of Georgia, just as the enforcement of the decree in this case may indirectly affect the finances of the United States, but, as said in the *Planters' Bank* case, that does not bar a suit against parties who can be sued on the ground that a sovereign who cannot be sued without its consent may be affected financially by the outcome of the suit. The question whether a particular suit is one against the State, within the meaning of the Constitution, must depend upon the same principles that determine whether a particular suit is one against the United States. *Tindal v. Wesley*, 167 U. S. 204.

Other cases holding that the fact that the United States may sustain financial loss by reason of the decree or judgment to be entered in the suit does not make it a necessary party are hereinafter cited under the other subdivisions of this general proposition.

(2)

The fact that the Treasurer of the United States is a party to this suit does not make the suit one against the United States or require that the United States be made a party.

The Treasurer of the United States is, by the Act of Congress creating the Postal Savings System, constituted the Treasurer of the Board of Trustees. (Sec. 759, Title 39, U. S. Code.) The assets delivered to him by the Woodlawn bank were delivered to him merely as pledgee and not to be covered into the United States Treasury as property belonging to the United States or to be disbursed in accordance with any Act of Congress. He recognized the capacity in which he received those assets by issuing receipts therefor which recited that he received them "in trust for this bank," meaning in trust for the Woodlawn bank (R. 26, Add. R. 18). This suit against the Treasurer of the United States was, therefore, not one to recover funds or property of the United States in his hands, but was a suit to recover from him property which had been illegally pledged with him and which he holds as pledgee in trust for the Woodlawn bank to secure deposits to the credit of the Trustees—not deposits to the credit of the United States—in the Woodlawn bank, and which, because of such illegal pledging, it is his duty to return to the receiver of the Woodlawn bank. To say that such a suit against the Treasurer is in essence one against the United States, or that the United States is an indispensable party to such suit, is, in effect, saying that no suit can be brought against the Treasurer of the United States to recover money or property illegally held by him because such suit is one in essence against the United States or that the United States is an indispensable party to any suit against its Treasurer. Such is not the law, as shown by the following cases.

In *Houston v. Ormes*, 252 U. S. 469, a suit in equity was brought by Lockwood in the Supreme Court of the District of Columbia to establish an equitable lien for attorney's fees upon a fund of \$1,200 in the Treasury of the United States, appropriated by Congress to pay a claim found by the Court of Claims to be due to one Sanders, who was made defendant with the Secretary of the Treasury and the Treasurer of the United States. The principal contention was that because the object of the suit and the effect of the decree were to control the action of the Secretary of the Treasury and the Treasurer of the United States in the performance of their official duties, the suit was in effect one against the United States, but the Supreme Court held otherwise. The court said (p. 472):

“But since the fund in question has been appropriated by act of Congress for payment to a specified person in satisfaction of a finding of the Court of Claims, it is clear that the officials of the Treasury are charged with the ministerial duty to make payment on demand to the person designated. It is settled that in such a case a suit brought by the person entitled to the performance of the duty against the official charged with its performance is not a suit against the Government.”

In *Orinoco Co. v. Orinoco Iron Co.*, 296 F. 965, this court had before it a case in which suit was brought by the Orinoco Iron Company against the Secretary of the Treasury and the Treasurer of the United States to recover moneys which had been paid into the Treasury of the United States as a trust fund to be distributed among the beneficiaries under a protocol between the United States and Venezuela whereby Venezuela agreed to pay to the United States \$385,000 as damages resulting from the action of revolutionists in dispossessing certain concessionaires and the subsequent action of Venezuela in canceling the con-

cessions. The Secretary of the Treasury and the Treasurer of the United States challenged the jurisdiction of the court on the ground that the suit was in essence a suit against the United States and that the United States was a necessary party, but this court said (p. 972):

“The iron company is not seeking in this suit to recover anything from the United States. It is conceded, and properly so, that the money in question is held in the treasury as a trust fund. The government has no claim to it and it makes none. No matter what the outcome of the suit might be, the government would receive none of the fund. For this reason the suit is not against the United States, as argued by the appellants.”

Upon appeal by the Secretary of the Treasury and the Treasurer of the United States, the Supreme Court, in *Mellon v. Orinoco Iron Co.*, 266 U. S. 121, affirmed the decree of this court upon the authority of *Houston v. Ormes*, *supra*, 252 U. S. 469.

To the same effect is *Doerschuck v. Mellon*, 55 F. (2d) 741, decided by this court in 1931.

Likewise, in this case Appellee is not seeking to recover anything from the United States and in no event will the United States receive any of the proceeds of the pledged assets if the pledge is foreclosed by sale or collection of the assets by the Treasurer of the United States as pledgee. That part of such proceeds required to pay in full the deposits of Postal Savings funds in the Woodlawn bank would necessarily be paid over by the Treasurer to the Board of Trustees of the Postal Savings System and any balance remaining to Appellee.

Haskins Bros. & Co. v. Morgenthau, 66 App. D. C. 178, cited on page 41 of Appellants' brief, is not in point. In that case it was sought to recover by suit against the Secre-

tary of the Treasury, the Treasurer of the United States, and the Comptroller General, in their official capacities, process taxes which had been collected and covered into the Treasury. It required an act of Congress to authorize payment out of the Treasury, and therefore no court could direct their payment out of the United States Treasury.

(3)

The fact that the Postal Savings System is an instrumentality of the United States does not prevent a suit against the Trustees or make a suit against them a suit against the United States.

This subdivision of the general proposition is closely related to the other subdivisions and the authorities cited under the other two subdivisions may be equally applicable to this subdivision, and, likewise, the authorities cited under this subdivision may be applicable to the other two subdivisions.

The real parties in interest in this suit are the receiver, representing the general depositors and creditors of the Woodlawn bank, and the Trustees of the Postal Savings System, representing the depositors in postal savings depository offices.

Appellants' contention that a suit against the Trustees is in essence a suit against the United States seems to be based upon the theory that the Postal Savings System, which is not a legal entity, or the Trustees, consisting of individuals, or both combined, constitute an instrumentality of the Federal government, and that a suit against the instrumentality is a suit in essence against the United States. The same contention has been made in numerous cases in an attempt to defeat the enforcement of valid claims against instrumentalities of the Federal government, but has not met with favor by the courts unless

the effect of the judgment or decree to be entered would be to control or obstruct some governmental function of the Federal government or to affect funds or property admittedly belonging to the United States.

The fact that the Postal Savings System is an instrumentality of the United States does not render the Trustees immune from suit nor does it require the United States to be made a party to a suit against the Trustees. The Bank of the United States was an instrumentality of the United States, (*McCullough v. State of Maryland*, 4 Wheat. 316), and yet the United States Supreme Court said that the United States was not a party to suits brought by or against the Bank. (*U. S. Bank v. Planters' Bank*, 9 Wheat. 904, 908.) National banks are instrumentalities of the United States, (*Farmers' etc. Nat. Bank v. Dearing*, 91 U. S. 29, 33), but the right of a plaintiff to sue a national bank to recover moneys or securities has never been denied on the ground that the bank is an agency or instrumentality of the United States and that, therefore, the suit is, in effect, or in essence, one against the United States; nor has it ever been held that the United States is a necessary party to a suit against a national bank where the only relief sought is against the bank itself. On the contrary the liability of national banks to be sued for debts was expressly stated in *National Bank v. Commonwealth*, 9 Wall. 353, and in *Davis v. Elmira Savings Bank*, 161 U. S. 275, 279.

Many other cases have followed the rule that a suit against an instrumentality of the United States is not a suit against the United States, nor is the United States a necessary party to such suit, even though the United States may sustain financial loss by reason of the enforcement of the judgment or decree entered in the suit. Thus

the United States Shipping Board Emergency Fleet Corporation was an instrumentality of the United States and all of its capital stock was owned by the United States and was paid for out of its treasury. It was sued many times and persistently contended that a suit against it was a suit against the United States because it was a mere agency of the United States and the United States owned all of its capital stock. The contention was denied by the courts. *Lord & Burnham Co. v. U. S. Shipping Board Emergency Fleet Corporation*, 265 F. 955; *Sloan Shipyards v. U. S. Fleet Corp.*, 258 U. S. 549; *Providence Engineering Corp. v. Downey Shipbuilding Corp.*, (C. C. A. 2) 294 F. 641.

In *Sloan Shipyards v. U. S. Fleet Corp.*, *supra*, 258 U. S. 549, the court said (pp. 566-567):

“The sovereign properly so called is superior to suit for reasons that often have been explained. But the general rule is that any person within the jurisdiction always is amenable to the law. If he is sued for conduct harmful to the plaintiff his only shield is a constitutional rule of law that exonerates him. Supposing the powers of the Fleet Corporation to have been given to a single man we doubt if anyone would contend that the acts of Congress and the delegations of authority from the President left him any less liable than other grantees of the power of eminent domain to be called upon to defend himself in court. An instrumentality of government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts. *Osborn v. Bank of United States*, 9 Wheat. 738, 842, 843; *United States v. Lee*, 106 U. S. 196, 213, 221. The opposite notion left some traces in the law, 1 Roll. Abr. 95, *Action sur Case*, T., but for the most part long has disappeared.

“If what we have said is correct it cannot matter that the agent is a corporation rather than a single

man. The meaning of incorporation is that you have a person, and as a person one that presumably is subject to the general rules of law."

What the court said in that case certainly applies to a suit against the Trustees of the Postal Savings System. Instead of creating a corporation, the Act of Congress created a board of trustees, consisting of persons, who are answerable for their wrongful acts, and who can be sued in their capacity as trustees without any express power as in the case of corporations.

In *Panama R. Co. v. Minnix*, (C. C. A. 5) 282 F. 47, the court said (p. 49):

"The liability of the Panama Railroad Company to suit, as any other railroad company, and its property to seizure, is not affected by the fact that the United States is the sole stockholder."

In the brief of the Attorney General filed on behalf of the Fleet Corporation in *Sloan Shipyards v. U. S. Fleet Corporation*, 258 U. S. 549 (555-560), the Attorney General classified into five general classes the suits which, although brought against an officer or agent of the Government, are not considered suits against the sovereignty, citing cases falling within each class. His fifth class is as follows:

"(5) To recover specific property, real or personal, because of the present wrongful action of an official, in good faith, and under color of office, unlawfully withholding plaintiff's property under the erroneous belief that the law authorized such withholding."

In *Osborn v. U. S. Bank*, 9 Wheat. 738, the United States Supreme Court said (p. 870):

"Where the right is in the plaintiff, and the possession in the defendant, the inquiry cannot be

stopped by the mere assertion of title in a sovereign. The Court must proceed to investigate the assertion, and examine the title."

In *Sloan Shipyards v. U. S. Fleet Corporation, supra*, 258 U. S. 549, the court said with reference to the liability of the Fleet Corporation to be sued (pp. 567-568):

"The plaintiffs are not suing the United States but the Fleet Corporation, and if its act was unlawful, even if they might have sued the United States, they are not cut off from a remedy against the agent that did the wrongful act."

In *United States v. Lee*, 106 U. S. 196, the Supreme Court, in an exhaustive opinion, considered the question whether an ejectment suit against individuals holding land as officers and agents of the United States, could be maintained, and held that it could be maintained and that the suit was not one in essence against the United States. The court said (pp. 207-208):

"On the other hand, while acceding to the general proposition that in no court can the United States be sued directly by original process as a defendant, there is abundant evidence in the decisions of this court that the doctrine, if not absolutely limited to cases in which the United States are made defendants by name, is not permitted to interfere with the judicial enforcement of the established rights of plaintiffs when the United States is not a defendant or a necessary party to the suit."

The court quoted the following from *Davis v. Gray*, 16 Wall. 203 (p. 215):

"Where the State is concerned, the State should be made a party, if it can be done. That it cannot be done, is a sufficient reason for the omission to do

it, and the court may proceed to decree against the officers of the State in all respects as if the State were a party to the record. In deciding who are parties to the suit, the court will not look beyond the record. Making a State officer a party does not make the State a party, *although her law may have prompted his action, and the State may stand behind him as a real party in interest.* * * *

"Though not prepared to say now that the court can proceed against the officer in 'all respects' as if the State were a party, this may be taken as intimating in a general way the views of the court at that time." (Italics ours.)

After referring to several cases theretofore decided, the court said (pp. 215-216):

"This examination of the cases in this court establishes clearly this result: that the proposition that when an individual is sued in regard to property which he holds as officer or agent of the United States, his possession cannot be disturbed when that fact is brought to the attention of the court, has been overruled and denied in every case where it has been necessary to decide it, and that in many others where the record shows that the case as tried below actually and clearly presented that defence, it was neither urged by counsel nor considered by the court here, though, if it had been a good defence, it would have avoided the necessity of a long inquiry into plaintiff's title and of other perplexing questions, and have quickly disposed of the case. And we see no escape from the conclusion that during all this period the court has held the principle to be unsound, and in the class of cases like the present, represented by *Wilcox v. Jackson*, *Brown v. Huger*, and *Grisar v. McDowell*, it was not thought necessary to re-examine a proposition so often and so clearly overruled in previous well-considered decisions."

It would unduly and unnecessarily prolong this brief to quote from the numerous decisions holding that a suit against an instrumentality of the United States or against an officer of the United States is not necessarily a suit against the United States or a suit to which the United States is a necessary party. We, therefore, merely refer to additional cases in which it was so decided as follows: *Federal Sugar Ref. Co. v. U. S. Sugar Equalization Board, Inc.*, 268 F. 575; *Providence Engineering Corp. v. Downey Shipbuilding Corp.* (C. C. A. 2), 294 F. 641; *Merchants Fleet Corp. v. Harwood*, 281 U. S. 519; *Panama R. Co. v. Curran*, 256 F. 768; *Philadelphia Co. v. Stimson*, 223 U. S. 605; and, finally, *Inland Waterways Corporation, et al. v. Hardee, Receiver*, decided by this court on October 31, 1938, and not yet reported. 69 App.

Bell-Dowlen Mills v. Draper, 83 S. W. (2d) 247, cited on page 43 of Appellants' brief, does not contain any decision of a court that a suit cannot be maintained against the Trustees of the Postal Savings System because it is an agency or instrumentality of the United States, but the decision in that case was based entirely upon a concession made by the plaintiff in that suit that process could not be issued by a Tennessee court against the Trustees of the Postal Savings System.

CONCLUSION.

This court should affirm the decree of the District Court because there was no error by that court in entering the decree.

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APPENDIX.

Act of June 25, 1910, c. 386, 36 Stat. 814-819.

Section 1 as originally adopted in part provides:

“That there be, and is hereby, created a board of trustees for the control, supervision, and administration of the postal savings depository offices designated and established under the provisions of this Act, and of the funds received as deposits at such postal savings depository offices by virtue thereof. Said board shall consist of the Postmaster-General, the Secretary of the Treasury, and the Attorney-General, severally, acting ex officio, and shall have power to make all necessary and proper regulations for the receipt, transmittal, custody, deposit, investment, and repayment of the funds deposited at postal savings depository offices.”

Section 3 as originally adopted:

“That said board of trustees is hereby authorized and empowered to designate such post-offices as it may select to be postal savings depository offices, and each and every post-office so designated by order of said board is hereby declared to be a postal savings depository office within the meaning of this Act and to be authorized and required to receive deposits of funds from the public and to account for and dispose of the same, according to the provisions of this Act and the regulations made in pursuance thereof. Each postal savings depository office shall be kept open for the transaction of business during such hours as the Postmaster-General, with the approval of the board of trustees, shall direct.”

Section 7 as originally adopted:

“That interest at the rate of two per centum per annum shall be allowed and entered to the credit of

each depositor once in each year, the same to be computed on such basis and under such rules and regulations as the board of trustees may prescribe; but interest shall not be computed or allowed on fractions of a dollar: *Provided*, That the balance to the credit of any one person shall never be allowed to exceed five hundred dollars, exclusive of accumulated interest."

Section 8 as originally adopted:

"That any depositor may withdraw the whole or any part of the funds deposited to his or her credit, with the accrued interest, upon demand and under such regulations as the board of trustees may prescribe. Withdrawals shall be paid from the deposits in the State or Territory, so far as the postal funds on deposit in such State or Territory may be sufficient for the purpose, and, so far as practicable, from the deposits in the community in which the deposit was made. No bank in which postal savings funds shall be deposited shall receive any exchange or other fees or compensation on account of the cashing or collection of any checks or the performance of any other service in connection with the postal savings depository system."

That portion of Section 9 (39 U. S. Code, 759) omitted by Appellants in their Appendix at page 48:

"If one or more member banks of the Federal reserve system exists in the city, town, village, or locality where the postal savings deposits are made, such deposits shall be placed in such qualified member banks substantially in proportion to the capital and surplus of each such bank, but if such member banks fail to qualify to receive such deposits, then any other bank located therein may, as hereinbefore provided, qualify and receive the same. If no such member bank and no other qualified bank exists in any city, town, village, or locality, or if none where

such deposits are made will receive such deposits on the terms prescribed, then such funds shall be deposited under the terms of this chapter in the bank most convenient to such locality. If no such bank in any State or Territory is willing to receive such deposits on the terms prescribed, then such funds shall be deposited with the treasurer of the board of trustees and shall be counted in making up the reserve of 5 per centum. Such funds may be withdrawn from the treasurer of said board of trustees, and all other postal savings funds, or any part of such funds, may be at any time withdrawn from the banks and savings depository offices for the repayment of postal savings depositors when required for that purpose."

Section 10 (39 U. S. Code, 760):

"Any depositor in a postal savings depository may surrender his deposit, or any part thereof, in sums of \$20, \$40, \$60, \$80, \$100, and multiples of \$100 and \$500, and receive in lieu of such surrendered deposits, under such regulations as may be established by the board of trustees, the amount of the surrendered deposits in United States coupon or registered bonds of the denominations of \$20, \$40, \$60, \$80, \$100, and \$500, which bonds shall bear interest at the rate of $2\frac{1}{2}$ per centum per annum, payable semiannually, and be redeemable at the pleasure of the United States after one year from the date of their issue and payable twenty years from such date, and both principal and interest shall be payable in United States gold coin of the present standard of value. The bonds herein authorized shall be issued only (first) when there are outstanding bonds of the United States subject to call, in which case the proceeds of the bonds shall be applied to the redemption at par of outstanding bonds of the United States subject to call, and (second) at times when under authority of law other than that contained in this chapter the Government desires to issue bonds for the purpose of replenishing the Treasury, in which case the issue

of bonds under authority of this chapter shall be in lieu of the issue of a like amount of bonds issuable under authority of law other than that contained in this chapter. The bonds authorized by this chapter shall be issued by the Secretary of the Treasury under such regulations as he may prescribe. The authority contained in section 759 of this title for the investment of postal savings funds in United States bonds shall include the authority to invest in the bonds herein authorized whenever such bonds may be lawfully issued. The bonds herein authorized shall be exempt from all taxes or duties of the United States as well as from taxation in any form by or under State, municipal, or local authority. No bonds authorized by this chapter shall be receivable by the Treasurer of the United States as security for the issue of circulating notes by national banking associations."

Section 12 (39 U. S. Code, 762):

"Postal savings depository funds shall be kept separate from other funds by postmasters and other officers and employees of the Postal Service, who shall be held to the same accountability under their bonds for such funds as for public moneys; and no person connected with the Post Office Department shall disclose to any person other than the depositor the amount of any deposits, unless directed so to do by the Postmaster General. All statutes relating to the safekeeping of and proper accounting for postal receipts are made applicable to postal savings funds, and the Postmaster General may require postmasters, assistant postmasters, and clerks at postal savings depositories to give any additional bond he may deem necessary."
